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ABSTRACT

Some critical questions provide a basis for developing policies appropriate in a given state. They include: (1) What is the state interest in independent higher education? (2) How should independent sector interests and participation be included in statewide planning for postsecondary education? (3) Should state support be extended to independent institutions or to their students, and if so, in what form? (4) What are the legal conditions of such support? (5) What forms of accountability are needed where such support is given? Each of these areas is discussed and task force observations and recommendations are offered. It is noted that every state is different, and each must develop policies that are valid in light of its own planning, total educational environment, legal and fiscal constraints, independent sector role, and status. Appendices cover: sources and statistical data; implications of programs of support; and the legal status of state aid to independent colleges and students attending them. (Author/LBH)

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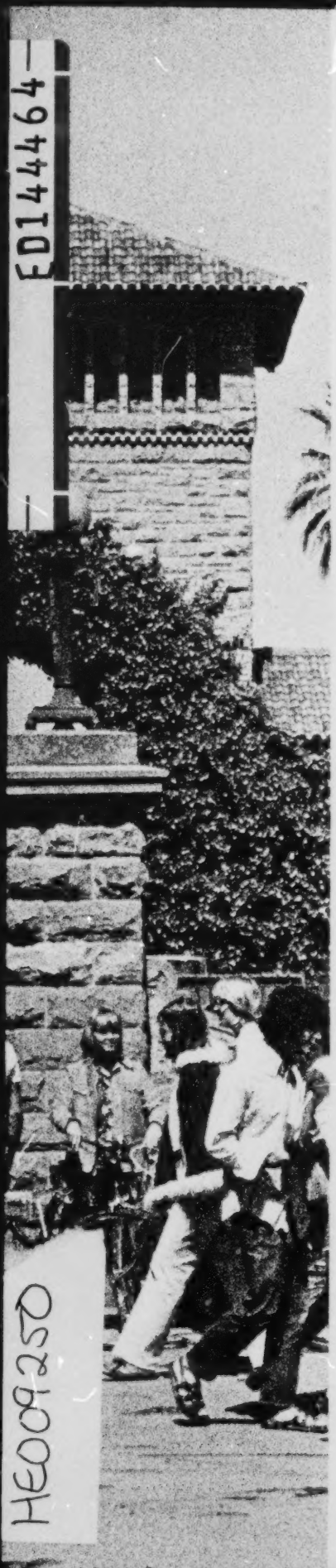

FINAL REPORT AND RECOMMENDATIONS:

Task Force on State Policy and Independent Higher Education

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JUNE 1977
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FINAL REPORT AND RECOMMENDATIONS:

Task Force on State Policy and Independent Higher Education

Report No. 100

Education Commission of the States
Denver, Colorado 80295
Warren G. Hill, Executive Director

June 1977

This report was approved by the ECS Steering Committee at its meeting on June 15, 1977, in New York City

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OFFICE OF THE GOVERNOR
INDIANAPOLIS, INDIANA 46204

OTIS R. BOWEN, M. D.
GOVERNOR

June, 1977

The Honorable Jerry Apodaca
Governor of New Mexico
State Capitol
Santa Fe, New Mexico 87501

Dear Governor Apodaca:

I am pleased to submit to the Steering Committee of the Education Commission of the States, the report of the Task Force on State Policy and Independent Higher Education. This task force was appointed in the Spring of 1976 under the leadership of your predecessor, Governor Arch Moore. I was glad to accept the invitation to serve as chairman. I have long been concerned with the condition and future of our independent colleges and I am proud of the contribution that these institutions make to higher education in Indiana as well as the role the state has played in supporting that contribution. A number of distinguished and hardworking people joined me on this task force. They represent experience in government, higher education and educational associations. Its vice-chairman was ECS Commissioner Richard E. Hawk, who is the Executive Director of the Higher Education Coordinating Board in Minnesota.

In a sense, this Task Force report furthers the interest which the Commission has already expressed in the independent sector of higher education. A March, 1975 policy statement noted the contribution made by the independent institutions to achievement of state goals for postsecondary education. It also expressed ECS concern that this contribution be reinforced by the preservation of an effective pluralistic system of higher education including the independent sector as integral to the total resources of the state.

This is an urgent issue. In most of our states changes in demographic patterns will alter the enrollment and distribution of enrollment within our institutions of higher education. At the same time, changing patterns of student interests, needs and attendance will complicate those demographic trends.

For most of us these changes will come at a time when budget limitations constrain the way we are able to respond. In this context, the state leaders should be concerned with the continued ability of the state to offer educational opportunities of high quality at reasonable costs. The help of the independent sector is an important ingredient in this effort.

This problem is complex and our states are diverse, especially in the role which the independent sector plays in the total state system of postsecondary education.

Thus, there is no single solution equally applicable in all states. Rather than provide formulas so general as to be of little help, what we have attempted to do is to develop a framework for addressing this problem which we believe will be valuable to states in the development of policy on this significant issue.

The members of the task force have devoted an enormous amount of energy to the development of this report. They have done so with diligence and thoughtfulness, meeting three times during the course of the year and between those meetings giving careful review to a number of revisions of the report itself. Their endorsement of this report is unanimous.

In transmitting this report to you and to the Steering Committee I take satisfaction both in the belief that it is an important contribution of ECS to educational policy development, and in the hope that it will be widely used by the states to review or improve the relationship they have with their independent colleges and universities.

Kindest personal regards,

Otis R. Bowen, M.D.
Governor

ORB:ml

Enclosure

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TASK FORCE ON STATE POLICY AND INDEPENDENT HIGHER EDUCATION

Chairman
The Honorable Otis R. Bowen, M.D.
Governor of Indiana

Vice Chairman
Richard C. Hawk
President
Higher Education Assistance Foundation
Minnesota

Members

Martha E. Church
President
Hood College
Maryland

Harold L. Enarson
President
Ohio State University

John Gaffney
Executive Director
Association of Independent Colleges and Universities of Michigan

The Honorable Joseph C. Harder
State Senator, Majority Leader and Chairman, Education Committee
Kansas

T. Edward Hollander
Chancellor
Board of Higher Education
New Jersey

The Honorable Vera Katz
State Representative
Oregon

Dan M. Martin
President
The Associated Colleges of the Midwest
Vice Chairman, Illinois Board of Regents

The Reverend J. Donald Monan
President
Boston College
Massachusetts

Morgan Odell
Executive Director
Association of Independent California Colleges and Universities

Kenneth R. Reeher
Executive Director
Pennsylvania Higher Education Assistance Agency

Lois Rice
Vice President, College Entrance Examination Board and Director of the Washington Office of CEEB
Washington, D.C.

Cameron West
President, North Carolina Association of Independent Colleges and Universities

Richard W. Jonsen
Project Director
Education Commission of the States

SUMMARY OF RECOMMENDATIONS

1.

Each state should construct a specific policy regarding the independent colleges and universities that serve its citizens. States should develop such policy in the light of clear state purposes and a detailed understanding of the role and condition of independent institutions.

2.

Statewide planning should be concerned with issues involving the independent sector, and postsecondary education including the independent sector should be accorded full participation in state planning and coordination.

3.

The state's planning approach to independent institutions will favor one of two alternatives: a student-centered approach, which emphasizes a fair market, or an institution-centered approach, which emphasizes the development of an efficient network of institutional opportunities. Most states employ an intermediate approach, with some mixture of these two elements. The choice of emphasis should be based upon the state's goals for postsecondary education, its assessment of the actual and potential contribution made by the independent sector to those goals, its legal structure and its history and traditions of education development.

4.

State policy makers should be sensitive to the protection and enhancement of institutional integrity in public and independent institutions alike, especially in those areas where it is most important to the vitality and effectiveness of the educational process. Institutional leaders should recognize the concessions to institutional autonomy that are made necessary under conditions of state support.

5.

Each state should consider appropriate programs that utilize the resources of the independent sector by providing support to independent institutions or to their students. The framework supporting the resulting decisions should include a clear articulation of the goals for postsecondary education, an understanding of the way in which the independent sector helps to achieve them and prior decisions about the state's approach to the independent sector.

6.

We recommend that states give first consideration to the development of need-based student grant programs, funded at levels adequate to provide students with real choice among institutions.

7.

Beyond need-based student aid, any program of support must follow the individual characteristics in a given state, and the state's chosen planning approach to the independent sector, as well as the constraints that might be imposed by the state's legal political and fiscal structure. The alternatives include direct institutional grants, tuition equalization grants, contracts and cost-of-education grants to institutions.

8.

Programs of support that benefit independent higher education should be monitored by the states to provide continuous assessment of the extent to which those programs accomplish the objectives for which they were redesigned.

9.

The federal government should strengthen its support of the development of state student aid programs through expansion of the State Student Incentive Grant Program (SSIG).

10.

In developing new programs of support to independent institutions (whether church-related or not), state policy makers should look carefully at the precedents established by the U.S. Supreme Court. Primary attention should be given to the need to exclude sectarian purposes and pervasively sectarian institutions from programs of direct support and the need to establish administrative criteria that identify those which are "pervasively sectarian" and those which are not. The necessity of establishing these guidelines, even in the absence of a Supreme Court decision in the matter of student aid, strengthens the presumption that student aid should be the preferred program of support in most states.

11.

With respect to the matter of state support of independent institutions, the responsibility for monitoring the accountability of the independent sector should be vested primarily in the state agency for postsecondary education. As noted earlier, it is essential that independent institutions participate in the agency's activities, and that there be adequate provisions for agency objectivity.

INTRODUCTION

As postsecondary education approaches the 1980s, it faces challenges that will require difficult decisions by its leaders. The problems causing these challenges include declines in the size of the traditional college-age population, increasing competition for students among institutions, limited financial resources and increased competition for them, the broadening of learning opportunities beyond the boundaries of traditional institutions and changes in styles of life, work, learning and leisure that may alter educational patterns and structures. In this context, the task of providing the students with access to high quality educational opportunities appropriate to their needs and interests is a difficult one.

New challenges, new decisions for postsecondary education

The tensions among institutions competing for scarce resources may intensify, and those tensions could be especially great between the public and independent sectors of higher education. One issue that touches upon both increased competition and careful resource use is state policy in relation to independent higher education.

Competition for scarce resources

Public and independent higher education have developed apart from one another, the former under state auspices, support and planning, and the latter largely following the separate purposes of numerous individual institutions. Now that postsecondary education as a whole is no longer expanding as it once was, the isolated development of these two systems is a thing of the past. Independent institutions are calling for state support while public institutions call for controls over the continuous expansion of independent institutions. There is a great need for careful review and development of state policies on independent institutions in order to insure the best overall use of the resources for postsecondary education, for both public and independent institutions, and in order to serve students and respond to the other needs of the state. If there are no general formulas for carrying this out, it is because there are virtually no characteristics of independent institutions, or roles they play, that are common to all states. But there are some critical questions that provide a basis for developing policies appropriate in a given state. These questions include:

No longer can public and independent institutions develop apart from each other

- What is the state interest in independent higher education?
- How should independent sector interests and participation be included in statewide planning for postsecondary education?
- Should state support be extended to independent institutions or to their students, and if so, in what form?
- What are the legal conditions of such support?
- What forms of accountability are needed where such support is given?

Some questions to guide policy development

The task force's observations and recommendations may disappoint those seeking automatic or highly specific solutions. There are none. Every state is different, and each must develop policies that make sense in light of its own planning, total educational environment, legal and fiscal constraints, independent sector role and status. We attempt to construct a framework within which effective policies can be formulated in each state according to its needs and priorities. The consistent perspective is that of public policy that will bring about the most efficient utilization of all of a state's postsecondary resources in order to achieve the most effective service to those needing or seeking postsecondary opportunity. The scope of concern is the independent sector, consisting of nonprofit, degree-granting institutions of higher education. We

The independent sector: nonprofit, degree-granting institutions of higher education

pass over the question of proprietary institutions, not because we are unaware of the need for state policy to be cognizant of this group of institutions. We are concerned with the independent sector as part of a total system of postsecondary education whose resources are available to serve students, and recognize that the proprietary institutions are also a significant aspect of that system. Throughout this report, we generally use higher education to refer to the sum of collegiate institutions in the independent and public sectors, and postsecondary education to refer to the total system of educational opportunity beyond secondary school, including public, independent and proprietary institutions, as well as other agencies providing formal and informal learning opportunities. We have also focused upon state policy, recognizing that federal policy must be taken into account by state decision makers and that there is need for much greater coordination of the two.

This report is divided into five sections, following the sequence of questions asked above. In the appendixes will be found supplementary material on sources and statistics used in the report, on the constitutional issue and on the implications of programs of support.

I. THE INDEPENDENT SECTOR AND THE PUBLIC INTEREST

States traditionally and in many cases by constitutional provision are concerned with adequate and effective postsecondary education opportunities for all their citizens. They have insured that opportunity through the development of admirable systems of public higher education, but they should also consider how independent institutions serve state needs. The development of an effective state policy requires an expression of this state concern, including a clear articulation of the state interest in postsecondary education and the way in which the independent sector furthers that interest.

In order to achieve a systematic policy, each state needs to understand the role played by its independent sector. Several characteristics of independent institutions define their role and contribution. Although these may vary among institutions and among states, every state needs to assess its independent institutions and their contribution to the state's postsecondary effort. The following 10 characteristics are a useful starting point for such an assessment.

Each state needs to understand the role of its independent sector

1. Enrollment

While the number of students in independent colleges and universities continues to rise, the *percentage* of total higher education enrollment in the independent sector has declined from about 50 percent in 1950 to about 22 percent in 1976. This percentage varies greatly from state to state — from a high of 57 percent to a low of 0. One-half of all independent college students are in independent institutions in New York, Massachusetts, Pennsylvania, California, Illinois and Ohio.

2. Socioeconomic Composition of Students

Tuition at independent colleges and universities is generally higher than at public institutions, but it is not the case that students at these institutions are mostly from affluent families. Federal and state student aid programs, as well as institutional resources, ameliorate price differences for lower-income students. Although students at all family-income levels pay some premium for attending, independent institutions play an important role in providing access to low-income students. They have traditionally served such students and continue to serve them in increasing numbers. In 1974, independent institutions enrolled 13 percent of the college students (who are dependent family members aged 18-24) from families with incomes of less than $15,000. In 1975, 24 percent of entering freshmen at independent institutions came from families with annual incomes of less than $10,000. The proportion of students from lower-income families has increased considerably at independent institutions of all types. The following table shows proportions of 1967 freshmen from families with incomes of less than $6,000 annually, proportions of 1975 freshmen from families with incomes of less than $10,000 annually (these incomes are roughly comparable allowing for inflation), and the percentage increase from 1967 to 1975 at several types of institutions:

Independent institutions provide access to low-income students

	Percent of 1967 Freshmen with parental income of less than $6,000	Percent of 1975 Freshmen with parental income of less than $10,000	Percentage Increase 1967-75
All institutions [public and independent]:	13.9	22.7	65
Independent institutions:			
2-year colleges	17.1	35.2	106
4-year colleges	11.0	19.3	75
4-year Protestant colleges	15.1	23.7	57
4-year Catholic colleges	8.9	19.6	120
Universities	7.5	10.2	36

The combination of federal and state student aid programs has enlarged college choice for students from lower-income families, facilitating their attendance at independent institutions. At the same time, there are indications that the expense burden on students from middle-income families — the traditional clientele of independent institutions — has not been lifted to the same extent. In the absence of effective state programs of student aid, the expected contributions from middle-income families, and their unmet financial need after available aid has been extended, could put increasing barriers to attendance at independent institutions in the way of such students.

3. Degrees Granted

A high proportion of degrees granted

The proportion of degrees granted by independent institutions is higher than their share of enrollments. Independent colleges and universities grant 33 percent of all bachelor's degrees, 35 percent of doctoral degrees and 58 percent of first professional degrees.

4. Variation by State and Institutional Type

Characteristics of the independent sector vary from state to state and, indeed, among different types of independent institutions. Major independent research universities, for instance, resemble their public counterparts more than they resemble other types of independent institutions.

5. Size

Small institutions add diversity to postsecondary opportunities

Independent institutions tend to be smaller than public institutions. Nearly one-half of all independent college students are enrolled in institutions of less than 2,500 students. This is an important characteristic because smallness has been shown to be a healthy environmental factor and, for some students, offers advantages of community and social participation. Perhaps because of this, smaller institutions have favorable rates of retention.

6. Church Affiliation

Value orientation

About half of all independent institutions have denominational affiliation. These institutions, which vary greatly in the expression of their church relatedness as well as the financial support derived from the affiliated church, offer students the opportunity to pursue the religious and value-oriented aspects of personal and intellectual development in a manner not available in the public sector.

7. Special Clienteles

To a greater extent than public institutions, independent colleges and universities serve specialized clienteles. Nearly all women's colleges and men's colleges are independent institutions, as are the majority of predominantly black institutions.

8. Excellence

Among independent universities (as well as among public institutions, of course) are many that have contributed in a notable way to the excellence of America's resources for research and graduate training. Many independent institutions maintain a strong commitment to the liberal arts, and some of the nation's most important centers of technology, art and music are found among independent institutions. The development of these and other distinctive missions is facilitated by the ability of independent institutions and their governing boards to chart their own course.

Contribution to excellence

9. Tuition and Costs

Independent institutions rely heavily on revenues from tuition. On the average, tuition represents about 50 percent of their education and general revenues, and for most institutions (that is, above the median institution) it is higher than that. Because of this reliance, tuition charges in independent institutions are high and tend to rise with inflation, making price comparisons between public and independent institutions dramatic, as is demonstrated by the following chart.

A heavy reliance on tuition

Average Tuition Charges in Institutions of Higher Education 1976-77

	Independent	Public	Ratio
2-year Institutions	$1,740	$387	4.5:1
4-year Institutions	2,529	621	3.8:1

Tuition differentials between public and independent institutions vary enormously from state to state, from as low as a few hundred dollars to over $2,500. Costs of educational services do not vary as much between the public and indendent sector as tuition charges do. Except at the university level, where the educational and general expenditures per student of independent institutions tend to be much higher, costs are quite similar between public and independent institutions. Of course, an individual public institution may have a higher cost per student than an individual independent institution.

10. Condition

Not only do states need to know about the role independent institutions play in the total system of postsecondary education, but they should understand the condition of the independent sector. There is no unanimous opinion regarding the fiscal health of independent institutions. The judgment of economic experts varies, and several available national studies reveal both favorable and unfavorable indicators.

On the favorable side, while there are exceptions, independent colleges and universities as a group seem to be fiscally stable, with their income matching their expenditures, and with the majority of independent institutions operating within balanced budgets and producing slight surpluses. At least temporarily, enrollments are still rising slowly for the majority of independent

Fiscal stability . . .

institutions. Leaders of independent institutions are optimistic about maintenance of quality, progress and competitive strength.

On the unfavorable side, a number of independent institutions appear to be losing ground financially. Revenues have not kept pace with inflation; there is heavy dependence upon gift income, an unpredictable income source, for current operating expenditures. Decreases in expenditures, in constant dollars per student, are more pronounced among certain types of independent institutions than among public colleges and universities. Independent institutions are presently spending about five percent of their operating funds on student financial aid, causing revenues to be diverted from other sources to cover student assistance needs. For some institutions, the price of financial stability may be erosion of quality and service. More serious still, institutional failures, the unequivocal sign of fiscal ill health, continue to occur regularly.

. . . possibly at the cost of quality and service

Individual state analyses will yield data for state policy development and such analyses are urgently needed because of the danger signals enumerated above. Demographic trends suggest that the condition of independent institutions could worsen rapidly in many states, accelerating both institutional failure and the erosion of quality and service that may accompany belt tightening measures taken to avoid failure.

The foregoing discussion highlights the role played by independent higher education and certain aspects of its condition. These vary from state to state and thus must be assessed by states individually.

Recommendation 1.

Each state should construct a specific policy regarding the independent colleges and universities that serve its citizens. States should develop such policy in the light of clear state purposes and a detailed understanding of the role and condition of independent institutions.

A state policy

The ensuing discussion presents a framework for the development of such a policy, based upon four key questions that may be answered somewhat differently by each state.

- What are the general policy objectives for postsecondary education within the state?
- What is the role of independent colleges and universities, and how do they contribute to the accomplishment of those objectives?
- Is there a consequent state interest in independent higher education?
- What state policies and programs are appropriate in light of the state's interest in the independent sector?

State goals for postsecondary education

State goals for postsecondary education commonly embrace several elements. Each state strives to maintain a postsecondary education system of high quality and, through that system, to provide the broadest possible access for prospective students by making educational opportunity available to all who can benefit from it, regardless of race, religion, sex or age. It is also a goal to provide within that system a diversity of programs, mission and institutional environments as well as flexibility and responsiveness to new needs. Finally, each state hopes to maintain its system of institutions and opportunities with the most efficient use of state revenues.

Regarding the second question, the independent sector is likely to contribute to the accomplishment of state objectives in the following ways:

Independent institutions contribute generally to access by providing higher education opportunities to a portion of the state's postsecondary students. They are a part of the total resources for postsecondary opportunity; indeed, independent institutions may offer the only local postsecondary opportunity in some areas. They broaden access by providing an element of choice, making available to each student a range of different educational opportunities within the scope of his or her talents and aspirations. In addition, independent institutions contribute to the quality of postsecondary education in the state. The spectrum of independent institutions includes those of recognized excellence, as does the spectrum of public institutions.

Contribution to state objectives

Other contributions to state objectives include diversity, independent governance and tax savings. The specialized missions and clienteles of independent colleges and universities contribute diversity to the system of postsecondary education, including special emphases that public higher education does not or may not offer. Church-related institutions, small liberal arts colleges, predominantly black colleges, colleges for women and men, institutions of unusual excellence, all contribute significantly to this diversity. At the same time, independent institutions are governed differently from public institutions, insuring an alternative to state monopoly of postsecondary education and a buttress for the appropriate independence of public as well as private institutions. Moreover, the resources of the independent sector are available to the state at a cost, in tax dollars, that is a small portion of the benefits. Even where states support independent higher education vigorously, total expenditures of independent institutions represent many times the state outlay. We estimate that the 2.41 million students enrolled in independent institutions would require $4.5 billion in state support if they were enrolled in public institutions, instead of the $566 million in state outlays that now support them.

Is there a consequent state interest in the independent sector of higher education? Clearly, as demonstrated above, independent colleges and universities contribute to the accomplishment of state objectives for postsecondary education. The overriding objective is to provide students with a diversity of educational opportunity of high quality in the most efficient manner, and the independent sector makes available to the state significant resources to achieve this. The public interest in independent institutions is currently substantiated by many state programs of direct or indirect support to independent colleges and universities. These programs respond in different ways to the role played by independent institutions.

The public interest in independent institutions

The general answer to the fourth question — what state policies and programs are appropriate? — is that the independent sector should be considered in state planning and coordinating of postsecondary education. More specifically, states should develop, where appropriate, programs of support to the independent sector that enhance and insure their contribution to the state goals of postsecondary education. These aspects of policy development are the focus of the next two sections.

Planning, coordinating and programs of support

II. STATEWIDE PLANNING AND INDEPENDENT HIGHER EDUCATION

All sectors must be involved in planning

A 1973 Education Commission of the States report, *Coordination or Chaos*, noted the challenges facing postsecondary education and observed that "without effective cooperation, coordination and planning on state and institutional levels, postsecondary education will be in for even more difficult times." Planning and coordination are sensible ways to insure the most effective response to societal and individual needs served by postsecondary education. As the number of traditional college-age students decreases and competition for funds increases, failure to plan and to involve all sectors in planning will have increasingly adverse consequences. Of specific concern is the competition among public, independent and proprietary sectors (and among institutions in these sectors) for clientele and resources. While independent sector involvement in planning may not eliminate the unhealthy aspects of such competition, it should help to build a network of relationships that could avert the most destructive possibilities inherent in that competition. Planning and decision making that ignore independent institutions and the issues concerning them may result in unnecessary duplication and inefficient use of resources.

Even planning and decision making that appear not to concern the independent sector may affect it. Many planning decisions relative to the public sector have implications for independent institutions, and vice versa. Planning and coordinating decisions must be made in as comprehensive a framework as possible.

Full participation of the independent sector in statewide planning

Recommendation 2.
Statewide planning should be concerned with issues involving the independent sector, and postsecondary education including the independent sector should be accorded full participation in state planning and coordination.

Federal initiatives have accelerated independent sector participation in state coordination. Actual experience varies enormously, as do the provisions for the incorporation of the independent sector into planning efforts. The type of involvement depends upon several things: whether the independent sector is organized to deal politically with the state, the structure and governance of the coordinating agency, the functional responsibilities of the agency, the scope of agency authority, and the sometimes elusive political dynamics of the state and its public officials and postsecondary education leadership.

Varieties of participation

When states incorporate the independent sector into planning activities, they do so through voting membership on the state board responsible for planning, through committees of independent college presidents acting in an advisory capacity to the state agency and through liaison between the planning agencies and the institution. The planning and coordinating agencies have varied structural forms, varied authority in relation to the independent sector, and have been established in different ways. Their functions relating to the independent sector may include identification of both immediate and long-range postsecondary education needs in the state; examination of the postsecondary education environment; review of plans, needs and resources; data collection; evaluation and planning for more effective use of resources; program review and approval in both public and independent institutions; and location of new public institutions or campuses.

The participation of the independent sector in statewide planning and coordination is appropriate across a broad range of topics and structures. States should incorporate independent sector concerns in their planning and coordinating agenda, and insure independent sector participation in all discussion and decisions. In addition to statewide planning and coordination, such participation might include state inducements for more voluntary planning and regional (both intrastate and interstate) planning.

In order to maximize efficiency and institutional creativity, state higher education officials should be concerned with the balance between effective regulation and the operation of a fair market in postsecondary education, in which some reasonable competition among institutions is possible. Effective planning need not inhibit the operation of a market in postsecondary education. It can, in fact, strengthen it. Planning can restore imbalances in the market; insure adequate information, which is necessary for intelligent choice in an open market; and bring about subsidies of desirable activities. Planners should work to insure the complimentarity of approaches that subsidize supply (through institutional support) with those that subsidize demand (through student aid).

Balancing regulation and a fair market

Recommendation 3.

The state's planning approach to independent institutions will favor one of two alternatives: a student-centered approach, which emphasizes a fair market, or an institution-centered approach, which emphasizes the development of an efficient network of institutional opportunities. Most states employ an intermediate approach, with some mixture of these two elements. The choice of emphasis should be based upon the state's goals for postsecondary education, its assessment of the actual and potential contribution made by the independent sector to those goals, its legal structure and its history and traditions of education development.

Student-centered or institution-centered approach

The student-centered approach is consistent with the traditions of autonomy of the independent sector and avoids the entanglement of the state in regulation and control of the independent institutions (though they must be properly accountable for any public funds they receive). The institution-centered approach is consistent with public efforts to obtain maximum efficiency in postsecondary education and to avoid overlap and duplication between institutions. If a student-centered approach is emphasized, the fairest market conditions should be maintained, consistent with an institutional system of high quality and diversity.

In any case, independence is essential to the vitality of institutions of higher education and should be pursued and encouraged within the clearly defined limits of a state plan. Effective planning and coordination can preserve and enhance the functional autonomy of institutions, permitting them to maintain reasonable independence; nevertheless, independent institutions often perceive that the benefits of their involvement in statewide planning and coordination will be purchased with some loss of independence. For example, state regulation of new and existing programs in public institutions may benefit independent institutions by reducing the establishment of competing programs. At the same time, independent institutions need to recognize their responsibilities to respect the same state regulatory authority when applied to their programs.

Independence is essential

Institutional integrity

Recommendation 4.
State policy makers should be sensitive to the protection and enhancement of institutional integrity in public and independent institutions alike, especially in those areas where it is most important to the vitality and effectiveness of the educational process. Institutional leaders should recognize the concessions to institutional autonomy that are made necessary under conditions of state support.

The involvement of the independent sector in statewide planning is not easily accomplished. Statewide planning must continue to distinguish between the public and independent sectors. Differences between the extent to which the state supports the public sector versus the independent sector enforce this distinction, as does authority with which planning is carried out. Some independent institutions may not wish to become involved in state planning and coordination at all, while others will participate with great reluctance. State planning should seek to enhance institutional uniqueness in mission and scope, rather than diminish it. Purely quantitative planning will not accomplish this.

Public policy on higher education needs to be comprehensive. Policies relating to independent institutions must be developed in light of their impact on public institutions, just as policies toward public institutions need to consider the impact on the independent sector. The most significant planning with respect to independent institutions is the design of those programs that generally aid such institutions and their students. This is the subject of the following section.

III. PROGRAMS OF SUPPORT: STATE ALTERNATIVES

Programs of support to independent institutions and to the students who attend them demonstrate the states' recognition of the contribution made by the independent sector to the accomplishment of state goals for postsecondary education. The growth of these programs has been influenced by that recognition, as well as by states' awareness of the fiscal problems experienced by independent institutions and the likelihood that these will increase. The particular support strategy chosen by a state should be based upon the state's planning approach to the independent sector and should be designed to make the best possible use of the resources of the independent sector in the service of the state.

Forms of state support

States currently employ a variety of forms of support to independent institutions or to their students. The two major categories are student aid and institutional support, but these two categories can be divided further:

Student Aid

- Scholarships and grants. Tuition equalization grants (not based on need) to students attending independent institutions; grants based upon need, merit and/or student programs.
- Loans
- Contracts
- Work/study programs
- Tax credits for tuition payments

Direct Institutional Support

- Grants
  - General (formula-based)
  - Categorical (specific purpose)
- Contracts
- Loans for construction
- Cost of education grants

Indirect Institutional Support

- Aid-in-kind (provision of services)
- Tax exemptions
- Tax credits
- Bonding authority

Thirty-nine states now have student-aid programs available to students attending independent institutions. The magnitude and impact of these programs vary by state. The five largest (New York, California, Illinois, Pennsylvania and Michigan) represent two-thirds of the total money these programs provide to students attending independent institutions. Institutional support programs are even more concentrated. Four states (New York, Pennsylvania, Illinois and Texas) account for nearly three-fourths of all such funds to independent institutions. On the average, state support programs (direct or indirect) represent about five percent of the education and general revenues of independent institutions. In only eight states does support exceed that average.

Critical questions about state support

Six questions are critical to decision making about state support of independent institutions or their students.

1. What are the state objectives for postsecondary education?
2. Does the independent sector contribute to the accomplishment of these objectives and does the state interest in independent higher education warrant programs of support?
3. What is the state's planning approach to the independent sector?
4. Should the support be aid to students, direct or indirect institutional support, or some combination of these?
5. What should the levels of support be?
6. What should be the design specifications of the programs selected?

The questions are clearly interrelated. The first two will determine whether state support is warranted. These plus the third will determine the form of support. Levels of support and program specification strongly affect how support is given, as well as its effectiveness and efficiency. If state support is warranted, the planning approach greatly influences the pattern of support. Because states differ in the composition and profile of the independent sector, in the constitutionality of state support, in mechanisms for program development and execution, and in budgetary constraints, no general conditions can be applicable in the same way to all states.

States should consider support for the independent sector

Recommendation 5.

Each state should consider appropriate programs that utilize the resources of the independent sector by providing support to independent institutions or to their students. The framework supporting the resulting decisions should include a clear articulation of the goals for postsecondary education, an understanding of the way in which the independent sector helps to achieve them and prior decisions about the state's approach to the independent sector.

What should the mechanisms of support be? There is no single best approach to state support programs. The appropriate pattern will vary from state to state, but if the state can define its relation to the independent institutions in terms of its objectives for postsecondary education, it is possible to determine the best kind of support program. Obviously, one alternative open to a state is *not* to appropriate dollars to independent institutions or to their students. If this decision is made, it should be based on a clear understanding of the consequences for the entire system of postsecondary opportunities in the state, both now and in the future. If the independent sector cannot sustain its quality or effectiveness without state support, such a decision will weaken the contribution made by independent colleges and universities to the achievement of overall state goals.

From goals to specific strategies

When a determination of state goals has been made and the preferred planning approach to the independent sector has been established, specific strategies for support to the independent sector can be identified. If the state's approach to the independent institutions is student centered and emphasizes a fair market, then the preferred method of support is student aid. Detailed objectives will be pursued through the form of aid (grants, loans), the criteria for eligibility (need, merit, residency and attendance status) and award ceilings. If the state approach to planning is institution centered and emphasizes supporting a strong system of public and independent institutional opportunities, as well as equity between the ways in which the public and independent sectors are supported, primary reliance should be on institutional aid. Specific objectives will be pursued through the form chosen (grants, contracts), allocation formulas, criteria for eligibility and funding levels. The following chart illustrates the way in which goals and planning approaches support specific decisions.

Goal	State Planning Approach	Possible Strategies
Maximum student access with reasonable choice	Student aid	Need-based student aid tends to equalize access among income groups. Tuition equalization grants tend to equalize access between public and independent sectors. A generous need-based student aid program that would aid students from middle-income families may eliminate the need for tuition-equalization grants.
	Institution centered	Institutional aid is not a significant strategy for access when an adequate institutional system already exists. However, contracts can be used as a strategy to insure access to specific programs otherwise unavailable in a given area.
An institutional system of high quality	Student aid	Student aid can help maintain institutional quality if students can select quality institutions without undue financial burdens.
	Institution centered	General institutional grant support contributes to maintenance of quality in the independent sector, as it does within the public sector.
Diversity	Student aid	Tuition grants broaden effective student choice and thus facilitate diversity.
	Institution centered	Contracts for specific educational programs may support distinctive and valuable programs and in some cases insure their maintenance at lower costs by independent institutions.
Efficiency	Student aid	Need-based student aid will insure access to independent institutions at the lowest level of state expenditure necessary to meet needs over and above family contribution. Tuition equalization grants produce benefits to the state in student access to independent institutions, with state outlay of aid used to cover a portion of costs. May be inefficient for students who do not need such grants to enable them to choose independent institutions.
	Institution centered	Institutional grants contribute to the efficient utilization of the independent sector in general. Contracts allow state utilization of specific independent sector programs, sometimes at less than comparable costs of direct state operation.

First priority: need-based student grant programs

Recommendation 6.

We recommend that states give first consideration to the development of need-based student grant programs, funded at levels adequate to provide students with real choice among institutions.

Student aid should be considered as the foundation of state support because it recognizes the primacy of adequate student access to a reasonable range of quality postsecondary opportunities. Further, it enhances access to independent institutions, making ability to pay a less formidable barrier for low-income students. It may be more consistent with constitutional limitations, and it results in the least state involvement with the internal decision making of institutions.

Determining the true ability to pay

The development of effective programs of need-based student aid requires determining the true ability to pay at various income levels and ascertaining the reasonable tuition differentials between institutional types. Need-based programs can be designed to provide tuition offsets for students in middle-income levels. This can be done by funding state student-aid programs at high enough award levels to meet typical tuition costs at independent institutions, and by establishing flexible family contribution schedules that recognize the true ability to pay at middle-income levels.

Factors to be considered in establishing maximum awards for student-aid programs (either need-based or partial tuition equalization) include tuition at independent institutions and tuition differentials between independent and public institutions. If award limits are small, the program will be ineffective in providing choice. If a state program is limited to tuition and fees, which makes maximum choice its principal objective, it should have a maximum grant level at least equal to the differential between average public and average private tuition in the state.

Recommendation 7.

Support programs must be tailored to each state

Beyond need-based student aid, any program of support must follow the individual characteristics in a given state, and the state's chosen planning approach to the independent sector, as well as the constraints that might be imposed by the state's legal, political and fiscal structure. The alternatives include direct institutional grants, tuition equalization grants, contracts and cost-of-education grants to institutions.

What should the levels of support be? In order to arrive at levels of support that are equitable and consistent with the policy purposes they represent, it is valuable to establish in advance the procedures for fixing those levels. One method gaining increased support is to base the total appropriation for independent institutions on a percentage of the per-student appropriation for public institutions. Whatever approach is used, it is advantageous to establish it in advance and also to fix the proportions of support flowing through various programs.

Design specifications

What should be the design specifications of the programs selected? State strategy in selecting from among the major forms of support can reflect significant policy purposes. The design specifications of those programs will also represent important policy decisions, such as basing award levels on absolute need (ability to pay) or relative need (cost minus ability to pay), fixing award ceilings at tuition levels, determining eligibility by attendance status, as well as the specifications of institutional programs in terms of allocation formulas, eligibility of church-related institutions and so forth.

Finally, the goals and policy objectives should be translated into measurable outcomes that will allow the programs of aid to be evaluated in terms of those outcomes, and federal policy should be designed to complement and strengthen state efforts.

Recommendation 8.
Programs of support that benefit independent higher education should be monitored by the states to provide continuous assessment of the extent to which those programs accomplish the objectives for which they were designed.

Continuous assessment

Recommendation 9.
The federal government should strengthen its support of the development of state student aid programs through expansion of the State Student Incentive Grant Program (SSIG).

SSIG has a proportionately more beneficial impact on independent institutions than any other federal student-aid program. Federal encouragement to expand state programs recognizes the ability of state policies to target tuition and tuition differentials, since these vary considerably by state. Further, federal incentives could provide inducements to allow out-of-state use of grants, a policy many states are extremely reluctant to adopt.

The necessary and appropriate involvement of the state with the institution varies enormously from program to program described above. This involvement raises two kinds of issues that concern policy makers. The first is constitutionality — the extent to which state constitutional provisions constrain decisions about the development of programs of state support. The second is accountability. What mechanisms of accountability are appropriate to various programs of support? These two issues will be discussed in the next two sections.

IV. CONSTITUTIONAL AND LEGAL ISSUES AFFECTING INDEPENDENT HIGHER EDUCATION

Programs of support to independent higher education are rarely free of constitutional implications. The U.S. Constitution offers guidance only with respect to the religious affiliation of the aided institutions. Most states mirror the U.S. Constitution in its establishment of religion clause, but a good many go beyond it by specifically prohibiting aid (in some cases, both direct and indirect aid) to sectarian institutions, by prohibiting aid to *all* independent institutions, by prohibiting the use of state credit by any nonpublic institution and by prohibiting grants to any independent corporation or institution.

Constitutional criteria for public support of independent institutions

The U.S. Supreme Court decision in *Roemer v. Board of Public Works of Maryland* strengthened the precedents upholding the constitutionality of state and federal programs that use tax dollars to support independent church-related colleges and universities. The *Roemer* decision relied on a three-part test established in earlier cases where state and federal aid to church-related institutions had been challenged. These criteria are (1) that the statute must have a secular legislative purpose, (2) that its principal and primary effect must be one that neither advances nor inhibits religion and (3) that it must not foster an excessive government entanglement with religion.

In cases involving higher education, the courts have focused upon the "primary effect" test, which requires (1) that no state aid go to institutions "so pervasively sectarian" that secular activities cannot be separated from sectarian ones and (2) that if secular activities *can* be separated out, they alone may be funded.

The character of the institution seems the more important factor. In *Tilton v. Richardson* the court held that the institutions involved were not pervasively sectarian because, although all colleges in question were Catholic, all enrolled and employed non-Catholics; none required attendance at religious services; all taught theology according to academic and professional standards, not attempting indoctrination; and all subscribed to principles of academic freedom. The court concluded that "the evidence shows institutions with admittedly religious functions but whose predominant higher education mission is to provide their students with a secular education."

The Supreme Court has identified four factors involved in the entanglement aspect of the test: the character and purposes of the recipient colleges, the nature of the aid provided, the resulting relationships between the government and the church-related institutions and the potential for political divisiveness resulting from the aid. In upholding direct noncategorical aid, the court cited the nature of the colleges as the critical factor in the equation, noting that the educational process at the defendant institutions was such that the risk of entanglement was substantially lessened.

Implications of court cases

Supreme Court decisions rendered thus far have several implications for state policy makers in relation to federal constitutional restraints. Colleges that are not pervasively sectarian (according to fairly general but somewhat ambiguous guidelines) may receive direct general support, which may be used only for secular purposes. Direct categorical support seems even less vulnerable under the same assumption. The court has given no reason to fear that student-aid programs will be viewed with less favor than the other two. The constitutionality of student aid is currently being tested in several states and has recently been upheld in three federal district court decisions (which are likely to be appealed to the U.S. Supreme Court). Some states have imposed

restrictions on the program and criteria for recipients and recipient institutions in order to insure constitutionality. Lastly, facilities assistance and loan programs appear safe with respect to constitutionality.

The U.S. Supreme Court has yet to hear a case involving student aid that would clarify the distinction (if any) between student aid and institutional aid. It has refused to hear an appeal on a challenge to a student-aid program in Missouri whose constitutionality was upheld by the Missouri State Supreme Court. The student-aid question has two important aspects. The first is whether student-aid programs on their face address a secular objective. The second is whether aid provided directly to a student obviates the need to conduct an investigation into the sectarian/secular nature of the institution attended. Some state courts have ruled "pervasively sectarian" institutions ineligible to receive student assistance grants. In the recent decision upholding the Tennessee student aid program, the federal district court concluded that no institutional eligibility criteria need be applied when grants are made to students attending accredited institutions, including sectarian ones.

Recommendation 10.
In developing new programs of support to independent institutions (whether church-related or not), state policy makers should look carefully at the precedents established by the U.S. Supreme Court. Primary attention should be given to the need to exclude sectarian purposes and pervasively sectarian institutions from programs of direct support and the need to establish administrative criteria that identify those which are "pervasively sectarian" and those which are not. The necessity of establishing these guidelines, even in the absence of a Supreme Court decision in the matter of student aid, strengthens the presumption that student aid should be the preferred program of support in most states.

State policy should follow legal precedents

No general observation can be made about state constitutions in regard to policies toward independent colleges and universities. Many state constitutions are considerably more proscriptive; legal interpretation may either lessen or intensify those proscriptions. An examination of the language of statutory provisions alone is insufficient to indicate what is permissible. Some general indications of state constitutional provisions and court decisions relating to them appear in Appendix C. Policy makers should be aware that some states seeking to extend support to independent institutions beyond the bounds of constitutional limitations have chosen to modify those limitations through constitutional amendments.

Courts have focused upon the U.S. Constitution's establishment clause in their decisions, and inadequate attention has been paid to the "free exercise" provision. Church-related colleges and universities contribute positively to the richness of American higher education and support the traditional values of open inquiry and academic freedom (as the Supreme Court has noted). These institutions are providing opportunities for spiritual development, which are constitutionally protected. Policy makers should regard both of these positive contributions of church-related higher education as they develop programs that strengthen postsecondary opportunity and respect constitutional prohibitions.

V. ACCOUNTABILITY OF THE INDEPENDENT SECTOR

Accountability is a fact of institutional existence for public and independent higher education, both in the sense of responsibility to the needs of society and to the total system of postsecondary education.

Sources and types of accountability

The independent sector's accountability to the state flows from the tax revenues that support it and from the involvement of institutions in the postsecondary planning and coordinating function. Independent institutions are, of course, already accountable in a number of ways to different constituencies. This accountability includes reporting to state and federal agencies, accreditation, program review and approval by state agencies and compliance with various state and federal codes and regulations. Some of these are voluntary, some involuntary.

As the state increasingly acknowledges the public function of independent higher education through its policies and programs of support, the responsibilities of the independent institutions to the state will shift somewhat from the voluntary to the involuntary. Unless carefully designed, the mechanisms of accountability may be inappropriate and in many cases may be viewed as such by institutions. Institutions and state agencies must together work out the details of accountability to maximize both the public interest and institutional effectiveness.

Institutions are accountable to the state

This report is concerned with institutional accountability to the state and to its agencies. Any institution of higher education is accountable to a variety of constituencies in the degree to which it receives support from them and serves them. In relation to the state, there are two levels of accountability: (1) the general accountability for public functions that independent institutions perform and (2) the specific accountability that accompanies each program of support.

Recommendation 11.

With respect to the matter of state support of independent institutions, the responsibility for monitoring the accountability of the independent sector should be vested primarily in the state agency for postsecondary education. As noted earlier, it is essential that independent institutions participate in the agency's activities, and that there be adequate provisions for agency objectivity.

Accountability for what?

The manner in which accountability is rendered by independent institutions to the state depends upon the specific activity and upon the existence of state support. Theoretically, accountability is possible among all areas of institutional activity: goals, inputs, processes, outcomes and communcations. In general, these five areas of activity define the "for what" of accountability. The independent sector should be accountable to the state for its purposes and internal processes only in the broadest sense of voluntary responsibility for corporate actions that are reasonable and legal. The independent sector should account to the state for the personnel and fiscal resources it uses. General reports covering personnel, (i.e., student, faculty and administration) are commonly required by state and federal agencies. Fiscal resources are also subject to additional reporting with customary financial reports, such as balance sheets and revenue and expense reports, routinely prepared by the institution. Where money comes from state government sources, financial activity should be subject to additional ac-

countability, such as auditing. Where funds are earmarked, post audits should affirm that they were used for the intended purpose.

The reporting requirements of the state on fiscal and other institutional operations should be designed with the full involvement of those institutions which the requirements affect. The independent sector is accountable to the state for its educational outcomes in cases where the quality of those outcomes is specified in state planning. The evaluation of program duplication, quality and outcomes should apply equally to public and independent sectors and should equally involve them in design of the mechanisms for that evaluation. Where the state has declared its interest in the activity of independent colleges and universities and where that interest is embodied in programs of state support, there is a consequent interest in quality and duplication. Activity in this regard is likely to increase. Safeguards to excessive intrusions on the part of state government should be provided by equal treatment of public and independent sectors and early involvement of both sectors in design of evaluation activity.

The state should hold both independent and public institutions accountable for their external communications, especially to prospective students, in regard to the accuracy and completeness of those communications. State initiatives to improve the availability of information for informed college choice is warranted by the state's interest in protecting consumers and in broadening student opportunities. Guidelines for institutional provision of information should be developed with the full and timely participation of the affected institutions.

The state responsibility

The previous discussion has emphasized the responsibility of independent institutions to accommodate themselves to appropriate forms of accountability, especially as state support becomes a significant portion of their revenues. Of equal importance is the responsibility of the state to construct mechanisms for accountability in concert with the independent institutions. States are closer to institutional activities than the federal government and therefore should be in the best position to bring accountability into line with educational and institutional integrity. A policy of minimal intrusion on the part of the state is a good policy.

Decentralization respects the reality that minimal interference with institutional activity will maximize opportunities for new and imaginative solutions to societal needs that can be met by higher education. This does not imply acceptance of mistaken notions about institutional autonomy but rather the wisdom of decentralization in any kind of organizational activity — especially in higher education, which is basically a professional and interactive process.

Appropriate accountability is not the same for public as it is for independent institutions. Two significant facts substantiate this. First, the independence of the governing boards of independent institutions. Though they govern as a trust in the public interest, they are not linked directly to governmental structures by appointment or election. Second, the sources of revenue of independent higher education are, for most institutions, from predominantly private sources (tuition, gifts and endowment income) unlike those of public institutions.

Devices to insure responsiveness or accountability on the part of the independent sector must be scrupulous as to their appropriate scope. The need for flexibility and institutional integrity, as well as the reality of interdependence, must always be borne in mind by policy makers. Where public support is given in view of the public interest, measures may be taken to verify that this interest has been served.

Appendix A
Notes on Sources and Statistical Data

This appendix provides statistical information and notes on sources to accompany the narrative of the report. The sequence followed in the appendix follows that in the report text. (Page numbers in parentheses refer to pages in main text.)

I. The Independent Sector and the Public Interest (page 1)

A. Enrollment (page 1). The accompanying exhibits (A-1 to A-5 at the end of this appendix) demonstrate: 1) enrollment in independent institutions has risen in absolute numbers since 1950, while declining as a percentage of total enrollment; 2) variation among states is considerable — in the magnitude of their independent institutional enrollment, in the percentage of total enrollment in independent institutions and in the enrollment changes in the independent sector; and 3) institutional variations in enrollment maintenance also are considerable. Of course, trends are important primarily because of the clues they provide for future events. We know that the downward trends in college-age population will have a different impact on different states and on different types of institutions. A recent report by Joseph Froomkin featured in the May 31, 1977 issue of the *Chronicle of Higher Education* suggests that one-fifth of the independent institutions declined in enrollment between 1970 and 1975. These institutions tended to be less selective and charged lower tuition than those that did not lose enrollment. Policy development must consider carefully these trends and possibilities.

The sources of enrollment data are from the Higher Education General Information Survey (HEGIS) of the National Center for Education Statistics and also from W. Vance Grant and C. George Lind, *Digest of Educational Statistics* (Washington, D.C.: National Center for Education Statistics, 1976).

B. Socioeconomic Composition of Students (page 1). The participation rates of students by institution and family income levels are derived from the Bureau of the Census annual report on population characteristics: U.S. Department of Commerce, Bureau of the Census, *Current Population Reports*, "School Enrollment — Social and Economic Characteristics of Students: October 1971 and October 1975," Series P-20, (Washington, D.C.: U.S. Government Printing Office, 1972 and 1976). Exhibit A-6 contains additional information from that source.

Information on the distribution of students by income level within different institutional types (in the chart below) is from Alexander Astin et al., *National Norms for Entering Freshmen*, American Council on Education and Laboratory for Research in Higher Education, (Washington, D.C. and Los Angeles, Calif.: University of California at Los Angeles, 1968, 1976, 1977). 1975 figures were used for better comparability with 1967 figures. The norms for 1976 show somewhat lower percentages of students below $10,000 annual family incomes for most categories of independent institutions.

Percentage of Freshmen With Parental Income Less Than $10,000 (1976)

All Institutions	Independent Institutions					
	2-Year colleges	4-Year colleges			Universities	Predominantly black institutions
		Nonsectarian	Protestant	Catholic		
21.6	28.4	15.9	19.4	18.0	12.1	47.6

The decline may be attributable partially to the effect of inflation: the family income comparable to $10,000 in 1975 would be about $10,550 for 1976, allowing for inflation — bringing additional students under that family-income figure. The evidence on the costs of college to students from middle-income families is difficult to obtain. One source of information is data on the actual family contribution toward the cost of education.

Student Reported Parental Contribution to College Costs by Institution Cost and Family Income Level (Entering Freshmen, 1974)

	Institutional Cost (Tuition, fees)				
Family Income	$0-1,500	$1,501-2,000	$2,001-2,500	$2,501-3,000	$3,001 4,000
$0-6,000	290	420	555	741	414
$6,001-10,000	484	664	842	941	935
$10,001-15,000	774	1,048	1,327	1,582	1,596
$15,001-20,000	1,099	1,494	1,844	2,212	2,262
$20,001-30,000	1,461	2,058	2,655	3,176	3,315
$30,001 or more	2,013	2,916	3,604	4,108	4,349

Source: Special analysis from "National Norms" data file, University of California at Los Angeles Laboratory for Research in Higher Education.

Within income levels, the contribution made by a family to college costs tends to rise with the cost of the institution, so that it is clear that whatever the expected contribution at a given income level, *some* premium is paid for attendance at an independent (higher-cost) institution. State studies of costs of education and sources of student support tend to confirm this. Actual contributions made by families with students attending independent institutions tend to resemble expected family contributions projected in the College Entrance Examination Board's College Scholarship Service schedules, whereas actual family contributions for students attending public institutions are somewhat lower than expected contributions. See the following sources: New Jersey Commission on Financing Postsecondary Education, *A Special Analysis: Family Financial Circumstances and Patterns of Financing a College Education* (Trenton, N.J.: New Jersey Commission on Financing Postsecondary Education, 1975); California Student Aid Commission, *Student Resource Survey Number 2* (Sacramento, Calif.: California Student Aid Commission, 1976); and Pennsylvania Higher Education Assistance Agency, *A Study of the Characteristics and Resources of Students in Postsecondary Education in the Commonwealth of Pennsylvania* (Harrisburg, Pa.: Pennsylvania Higher Education Assistance Agency, 1976).

There is evidence that choice may be somewhat more constrained by ability to pay for students from middle-income families than for those from either low- or high-income families. See John Lee et al., *Student Aid: Description and Options* (Palo Alto, Calif.: Stanford Research Institute, 1975). In states with significant student aid programs, the availability of assistance does appear to influence student decisions to attend independent (higher-cost) institutions that, lacking such aid, they would have considered impossible to attend. See Larry Leslie and Jonathan Fife, "The College Student Grant Study," *The Journal of Higher Education* (December 1974). In a study of student choice, 27 percent of respondents indicated a preference for a private college "if costs were not a factor," as against the 22 percent who actually attend independent institutions. See "Better Financial Aid Information," unpublished data that was gathered by Better Information For Student Choice Project — College Scholarship Service Study (funded by the Fund for the Improvement of Postsecondary Education).

C. Degrees Granted (page 2). Information on degrees granted is from Curtis Barber and Agnes Wells, *Earned Degrees Conferred: 1971-72* (Washington, D.C.: National Center for Education Statistics, 1975). One reason the percentage of degrees conferred at the bachelor's degree level and above is much greater than the percentage of enrollment represented in independent institutions is the heavy concentration of public institution enrollment in two-year colleges that award degrees at less than the baccalaureate level. Independent institutions award only 13.7 percent of associate degrees. Also, the retention of enrolled students is higher in independent institutions, making them more "efficient" with respect to the ratio of degrees awarded to entering freshmen. Information on retention can be found in Engin L. Holmstrom and Paula Knepper, *Four-Year Baccalaureate Rates: A Limited Comparison of Student Success in Private and Public Four-Year Colleges and Universities* (Washington, D.C.: American Council on Education, 1976).

D. Variation by State and Institutional Type (page 2). Variations by *state* in the independent sector are illustrated by the state enrollment figures given in exhibits A-2 to A-5. Variation among independent institutions by institutional types is also considerable. Independent institutions vary enormously in size, programmatic emphasis, complexity, religious affiliation, geographic location (region and proximity to metropolitan area), tuition level, educational expenditures, endowment and numerous other factors. An excellent discussion of these characteristics can be found in Elaine H. El-Khawas, *Public and Private Higher Education: Differences in Role, Character and Clientele* (Washington, D.C.: American Council on Education, 1976).

E. Size (page 2). Data on size are from W. Vance Grant and C. George Lind, *Digest of Educational Statistics* (Washington, D.C.: National Center for Education Statistics, 1976). Though the majority of independent *institutions* are small (under 1,000 students), the majority of *students* attend institutions of less than 5,000 enrollment, as demonstrated in the following table (see page 20).

F. Church Affiliation, G. Special Clienteles, H. Excellence (page 2). The Carnegie Council on Policy Studies in Higher Education counts 778 independent institutions with religious affiliation. See *The States and Higher Education:*

Independent Institutions by Size and Total Enrollment

Size	Number of schools	Percent of schools	Cumulative percent	Total enrollment in each size category	Percent of of total enrollment	Cumulative percent
Under 200	276	18.0	18.0	31,030	1.5	1.5
200-499	313	20.4	38.4	113,942	5.6	7.1
500-999	391	25.5	63.9	275,394	17.5	38.1
1,000-2,400	366	23.9	87.8	355,730	17.6	55.7
2,500-4,999	104	6.8	94.6	358,847	17.6	55.7
5,000-9,999	51	3.3	97.9	370,040	18.2	73.9
10,000-19,999	22	1.4	99.3	280,723	13.8	87.7
20,000-29,999	9	0.5	99.8	214,091	10.5	98.2
30,000 or more	1	...	99.8	35,432	1.7	99.9

Source: W. Vance Grant and C. George Lind, *Digest of Educational Statistics, 1975* (Washington, D.C.: National Center for Education Statistics, 1976), p. 98.

Supplement (Berkeley, Calif.: Carnegie Council on Policy Studies in Higher Education, 1976). It also gives figures on independent institutions serving special clienteles. There are numerous sources that discuss church affiliation and value orientation of independent institutions, including: M. Patillo and D. M. Mackenzie, *Church Sponsored Higher Education in the United States* (Washington, D.C.: American Council on Education, 1966); B. R. Clark, *The Distinctive College: Antioch, Reed and Swarthmore* (Chicago, Ill.: Aldine, 1970); and Earl McGrath, *Values, Liberal Education and National Destiny* (Indianapolis, Ind.: The Lilly Endowment, Inc., 1975).

The Carnegie publication also reviews the exceptional achievements of independent institutions in terms of membership of the National Academy of Sciences and Guggenheim Fellowship Awards. Excellence is a moving target, however, and depends greatly on the vantage of the observer. There is the excellence of major research universities that can be measured by national awards and other recognition. There is also the excellence of strong liberal arts colleges that can be measured in status and selectivity and the excellence of less visible institutions whose commitment is to serve their missions and students in the most effective way possible. Excellence is an elusive concept, both from the standpoint of criteria and of measurement.

I. Tuition and Costs (page 3). The source for tuition data is Elizabeth Suchar, Stephen H. Ivens and Edmund Jacobsen, *Student Expenses at Postsecondary Institutions* (New York, N.Y.: College Entrance Examination Board, 1976). For 1977-78 the tuition figures published in *The Chronicle of Higher Education* on March 28, 1977, are:

Two-Year Institutions		Four-Year Institutions	
Public	$ 389	Public	$ 621
Independent	1,812	Independent	2,476
Ratio	1:4.7	Ratio	1:4

Analysis of tuition differentials may be found in the supplement to the previously mentioned Carnegie publication, *The States and Higher Education*.

It must be emphasized that tuition differentials between public and independent institutions vary greatly from state to state. Exhibit 7 shows the variation among the states in the tuition differential between public and independent institutions of similar types. The "tuition gap" issue is complex, however. A good discussion of its complexity with statistics and trends in tuition and other charges, as well as comparisons with disposable income, may be found in W. John Minter and Howard R. Bowen, *Private Higher Education, Third Annual Report on Financial and Educational Trends in the Private Sector of American Higher Education* (Washington, D.C.: Association of American Colleges, 1977), pp. 62-67. Cost data are from Marilyn McCoy, *State and Federal Financial Support of Higher Education: A Framework for Interstate Comparisons 1973-74* (Boulder, Colo.: National Center for Higher Education Management Systems, 1976), pp. 95, 107. Variations in per student educational expenditures at the university level are influenced both by the relatively high proportion of graduate students in private universities, and the inclusion, in the public university categories, of developing universities that may have still relatively limited commitments to high-cost graduate and research pro-

grams. Exhibit A-8 shows the variation in per student costs (educational and general expenditures) in independent institutions by state.

J. Condition (page 3). An extensive literature has developed in the last decade on the fiscal condition of independent colleges and universities. The more important publications are: Charles L. Anderson and Lyle H. Lanier, *A Study of the Financial Condition of Colleges and Universities: 1972 and 1975* (Washington, D.C.: American Council on Education, 1975); John Augenblick, Joseph Heyison and Andrew H. Lupton, "The Financial State of Higher Education," *Change*, No. 8, (September 1976); Howard R. Bowen and John Minter, *Private Higher Education: First Annual Report on Financial and Educational Trends in the Private Sector of American Higher Education* (Washington, D.C.: Association of American Colleges, 1975. Also 1976 and 1977); Earl F. Cheit, *The New Depression in Higher Education: A Study of Financial Conditions at 41 Colleges and Universities* (New York, N.Y.: McGraw-Hill, Inc., 1971); Earl F. Cheit, *The New Depression in Higher Education: Two Years Later* (Berkeley, Calif.: Carnegie Commission on Higher Education, 1973); William Jellema, *From Red to Black?* (San Francisco, Calif.: Jossey-Bass Publishers, 1973); Hans Jenny and G. Richard Wynn, *The Golden Years. A Study of Income and Expenditure Growth and Distribution of 48 Private Liberal Arts Colleges, 1960-1968* (Wooster, Mass.: Wooster College, 1970); Hans Jenny and G. Richard Wynn, *The Turning Point: A Study of Income and Expenditure Growth and Distribution of 48 Private Four-Year Liberal Arts Colleges, 1960-70* (Wooster, Mass.: Wooster College, 1972); National Commission on the Financing of Postsecondary Education, *Financing Postsecondary Education in the United States* (Washington, D.C.: National Commission on the Financing of Postsecondary Education, 1973).

It may be helpful to illustrate both the scope of judgment and the lack of unanimity in referring to several of these reports. The 1977 Minter and Bowen report repeatedly uses the word "stability" to describe the condition of the independent sector. The institutions that the authors studied (which do not include major research universities or two-year colleges) appear to be holding their own. Over the period 1970-71 to 1975-76, current revenues have kept pace with inflation (except for the very high inflation year of 1974-75). For 1974-75 and 1975-76, each of the four institutional groups studied achieved a combined surplus of current fund revenues over current fund expenditures, although the surplus achieved in 1975-76 was less than one percent.

On the negative side however, are the following:

1. Additions to physical plants have slowed considerably.
2. Interfund borrowing has increased, especially in doctoral-granting universities.
3. Growth in fund balances (from 1969-70 to 1975-76) have not kept pace with inflation plus enrollment growth.
4. Increases in current liabilities exceed increases in current assets.
5. Analysis of individual institutions identifies 13 to 90 institutions as "weak" in 1975-76, and 29 as "losing ground." No type of institution is overrepresented in this category.

In evaluating the aggregate balance sheets, Minter and Bowen conclude that "one could not say that private higher education on the whole is gaining ground; neither could one say positively that it is losing ground." (p. 47) The tenuousness of the stability, plus the uncertainty of the economic and demographic future, make them unwilling to predict on the basis of their assessment.

Much less optimistic in its conclusion is a report published recently in 1976 *Change* magazine, authored by Lupton, Augenblick and Heyison, that used 16 indicators of fiscal health and placed the majority (87 percent) of independent institutions in either "unhealthy" (27.1 percent) or "relatively unhealthy" (59.5 percent) categories. Only 3.4 percent were judged to be "healthy" or "relatively healthy." Problems raised by critics of this report about its reliance upon HEGIS data, the small sample used to factor analyze the indicators and general methodology do weaken confidence in its results. If the results have credibility with respect to the relationships among institutions, however, it is disturbing to note that institutional health is inversely related to institutional size, and institutions of less than 1,000 are considered to be mostly (64 percent) unhealthy.

An earlier study by the American Council on Education (Lanier and Anderson, 1975), based upon a large sample of public and private institutions, concluded that "progressive deterioration has been occurring in the financial condition of higher education as a whole in recent years." After surveying a sample of 646 institutions (with a 78 percent response rate and 61 percent usable returns), the report's chief find-

ings were that:

1. A high percentage of both public and private institutions had "negative growth rates" in terms of constant dollar expenditures per full-time equivalent (FTE) student. In 1974-75, no group of public and private institutions had median growth rates in educational and general expenditures per FTE student that exceeded the increase in the Consumer Price Index (p. 53).

2. The private institutions have generally been harder hit than have the public institutions (in the period studied).

3. Because higher education is a labor intensive "industry," it cannot offset the effects of inflation with productivity increases.

4. In the private sector, about one-third of all institutions reported deficits in current funds revenues for the years 1972-73, 1973-74 and 1974-75, with consistently higher proportions of institutions sustaining deficits among "Doctoral Universities I" and "Liberal Arts Colleges II."

5. The typical "student aid deficit" for private institutions in these years is a substantial share of the typical current operating deficit.

The National Commission on the Financing of Postsecondary Education, established in part to clarify the fuzzy financial distress situation (but whose 1973 report was published before the three studies just discussed), concludes that:

> Based on the analysis of selected statistical evidence, the financial status of postsecondary education enterprise is not substantially jeopardizing the achievement of postsecondary objectives. Some postsecondary institutions, however, are already in financial distress, and if present patterns and conditions of financing continue, there is a high probability that such distress will occur in several sectors of postsecondary education as well.

These differences of opinion are generally based on the general perspective taken by the analyst. Depending on which institutions one uses and which financial statistics are extracted, a varying view of financial distress emerges. Even those who do not recognize a general "crisis," do, however, see financial pressures as a growing problem, particularly in the private sector. Overall there is enough evidence "to provide sufficient justification for genuine concern." A recent review — George Weathersby and Frederic Jacobs, *Institutional Goals and Student Costs* (Washington, D.C.: American Association for Higher Education, 1977) — concluded that:

> While the magnitude of the financial distress reported by institutions differs from survey to survey, the consistent finding that a substantial proportion of (particularly private) institutions are experiencing financial distress is significant. Observers, researchers, and practitioners report that some adjustments have been made, that a "precarious balance" between income and expenditure has been achieved, but that this balance is continuously threatened by rising prices and a stabilizing student demand.

The debate about the fiscal health of independent institutions founders on a lack of adequate indicators of fiscal health. Even in the absence of a few agreed-upon criteria of fiscal health, the signs of difficulty (if not distress) are unambiguous:

1. Independent institutions rely heavily upon tuition revenue and these are vulnerable to changes in the student market: changes in population, student interest and ability (or willingness) to pay.

2. Because of this dependence, tuition discounts (unfunded financial aid) have been used increasingly to maintain enrollments, affecting the resources available to fund academic and other activities.

3. Short-term debt has increased, and in many institutions been converted to long-term debt.

4. The efforts necessary to maintain balanced budgets — both fiscal and programmatic — may have weakened some institutions both in their fiscal capacities and the quality of their academic program.

K. Contribution to State Objectives for Postsecondary Education (page 4). The figures used to estimate the total "tax savings" of independent institutions are total enrollment figures for 1976 as reported in the *Chronicle of Higher Education*, Feb. 22, 1977, times the average educational and general state support per student in public institutions of $1,881. See Marilyn McCoy et al., *State and Federal Financial Support of Higher Education: A Framework for Interstate Comparison* (Boulder, Colo.: National Center for Higher Education Management Systems, 1976), p. 33. Total state outlays for independent institutions and their students are from Joseph Boyd, *National Association of State Scholarship and Grant Programs: 8th Annual Survey* (Deerfield, Ill.: National Association of State Scholarship and Grant Programs, 1976) and Nancy M. Berve, "State Support of Private Higher Education," *Higher Education in the States*, Vol. 5, No. 3, (1976). The roughness of these estimates is necessitated by the use of different years.

II. Statewide Planning and Independent Higher Education (page 6)

The question of incorporation of the independent sector into state planning efforts is complicated by the considerable variety in postsecondary planning functions among the 50 states, and the variety also in the authority held and functions performed by the postsecondary agencies. Exhibit A-9 lists the states in which a postsecondary agency has planning/coordinating authority for the independent sector either by statute or as a matter of policy.

The specific mechanisms for inclusion of the independent sector in planning are illustrated below:

Mechanisms for Private College Participation in Statewide Planning for Higher Education

Mechanisms for Participation	Number of States
Through voting membership on the state agency responsible for higher education planning	25
Through a committee of private college presidents serving in an advisory role to the planning agency	7
Through a council of private colleges acting in an advisory capacity to the planning agency	12
Through contact from the planning agency to each private institution individually	12
Other	19

Source: Jay L. Chronister, *Statewide Planning and Private Higher Education* (Denver, Colo.: Education Commission of the States, 1976), p. 5.

The types of planning activities in which the independent sector is involved are illustrated below:

Types of Planning Activities in the States in Which Private Colleges are Involved

Types of Activities	Number of States
The identification of immediate state postsecondary educational needs	32
The identification of long-range state postsecondary educational needs	33
The identification of changing economic conditions and the implications of the changes for statewide higher education	25
The appraisal of plans, needs and resources of existing public and private institutions for planning purposes	31
The provision of projected enrollments and program offerings of private colleges for state planning purposes	32
Other	15

Source: Jay L. Chronister, *Statewide Planning and Private Higher Education* (Denver, Colo.: Education Commission of the States, 1976), p. 7.

Exhibit A-10 presents a more elaborate picture of the mechanisms for independent sector participation and the specific kinds of planning activities involved in that participation.

III. Programs of Support: State Alternatives (page 9)

Appendix B contains a detailed elaboration of programs of state support to independent institutions and the students attending them, along with some comments on the implications of these programs. The most authoritative summary of programs of state support to independent higher education is contained in Nancy M. Berve, "State Support of Private Higher Education," *Higher Education in the States*, Vol. 6, No. 1 (1977).

Exhibit A-11 shows by state the amount of state support to independent institutions and their students, and expresses these as a per full-time equivalent figure.

IV. Constitutional and Legal Issues Affecting Independent Higher Education (page 14)

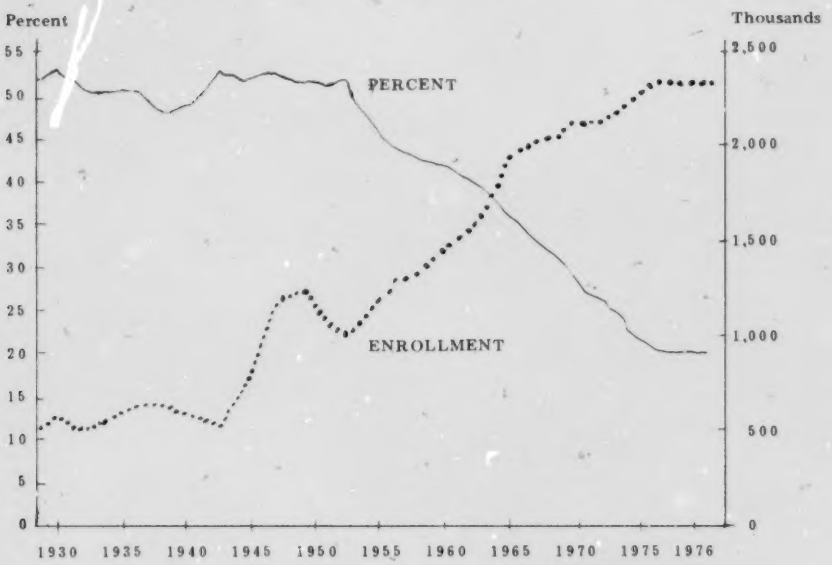
See Appendix C for a detailed treatment of this subject. An excellent discussion on this question can be found in National Commission on United Methodist Higher Education, "The First Amendment Question," *Endangered Service — Independent Colleges, Public Policy and the First Amendment* (Nashville, Tenn.: National Commission on United Methodist Higher Education, 1976). A recently published book presents an extensive treatment of the constitutional and legal issues at the federal and state levels. See A. E. Dick Howard, *State Aid to Private Higher Education* (Charlottesville, N.C.: The Michie Co., 1977).

V. Accountability of the Independent Sector (page 16)

Current forms of accountability generally required of the independent sector are treated in Exhibit A-12. See Carnegie Foundation for the Advancement of Teaching, *The States and Higher Education: A Proud Past and a Vital Future: Supplement* (Berkeley, Calif.: Carnegie Council on Policy Studies of Higher Education, 1976).

Exhibit A-13 shows in detail the specific accountability requirements following programs of support in 50 states.

Exhibit A-1
Enrollment in Private Institutions and Enrollment in Private Institutions as a Percentage of Total Enrollment, 1929 to 1976



Enrollment in private institutions as a percentage of total enrollment ———
Enrollment in private institutions (in thousands) • • • • • • • • •

Source: The Carnegie Foundation for the Advancement of Teaching, *The States and Higher Education: Supplement* (Berkeley, Calif.: Carnegie Council on Policy Studies in Higher Education, 1976).

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Exhibit A-2
Enrollment in Independent Higher Education by State (Head count, 1976), Independent Enrollment as a Percent of Total State Enrollment (1976) and Enrollment Change (1971-76)

State	Independent Sector Enrollment	Independent Sector Percent of Total Enrollment	Enrollment Change 1971-76	State	Independent Sector Enrollment	Independent Sector Percent of Total Enrollment	Enrollment Change 1971-76
Alabama	18,616	12.1	2,725	Missouri	62,211	28.6	11,034
Alaska	246	1.7	−1	Montana	3,055	10.0	399
Arizona	2,119	1.3	230	Nebraska	13,733	20.2	52
Arkansas	9 034	13.9	759	Nevada	185	0.6	86
California	153,849	8.8	25,004	New Hampshire	16,510	46.6	3,479
Colorado	12,990	8.5	−1,680	New Jersey	69,914	24.7	530
Connecticut	56,105	44.8	4,935	New Mexico	4,573	8.2	350
Delaware	4,758	17.6	671	New York	371,762	40.9	47,982
District of Columbia	66,399	82.7	814	North Carolina	51,229	22.0	1,994
Florida	57,413	17.5	11,586	North Dakota	1,611	5.3	298
Georgia	31,200	18.7	6,296	Ohio	90,660	21.5	2,200
Hawaii	4,754	10.8	1,499	Oklahoma	19,585	14.0	593
Idaho	7,711	19.5	320	Oregon	15,160	11.0	1,025
Illinois	138,105	23.0	1,640	Pennsylvania	184,482	42.3	3,800
Indiana	53,268	24.4	−1,277	Rhode Island	29,031	48.0	7,733
Iowa	35,011	32.2	−3,349	South Carolina	25,645	21.1	2,931
Kansas	13,593	11.4	917	South Dakota	8,565	28.4	2,001
Kentucky	20,710	16.4	627	Tennessee	39,969	22.8	3,713
Louisiana	20,645	13.6	545	Texas	80,169	14.3	6,312
Maine	9,956	25.8	863	Utah	28,900	34.7	−2,272
Maryland	27,418	13.8	−2,335	Vermont	11,399	42.0	577
Massachusetts	207,612	57.4	23,624	Virginia	28,378	12.8	742
Michigan	57,479	12.4	4,618	Washington	21,995	9.8	1,154
Minnesota	36,660	20.1	6,849	West Virginia	10,844	14.4	−971
Mississippi	10,645	10.6	1,714	Wisconsin	30,196	13.0	−163
				Wyoming	0	0	0

Source: HEGIS, National Center for Education Statistics, Data Systems Branch.

Exhibit A-3
Number of Independent Institutions by State and Number Showing Those With a Five Percent or Greater Increase or Decrease in Student Enrollment Between 1971 and 1976

State	Number of Independent Institutions	5% or Greater Increase	5% or Greater Decrease
Alabama	17	11	4
Alaska	1	0	0
Arizona	2	2	0
Arkansas	11	5	4
California	92	57	23
Colorado	9	4	3
Connecticut	24	12	7
Delaware	4	2	1
District of Columbia	13	7	4
Florida	27	16	8
Georgia	32	26	5
Hawaii	4	3	1
Idaho	3	1	1
Illinois	84	38	34
Indiana	39	14	18
Iowa	35	9	20
Kansas	23	13	7
Kentucky	27	11	9
Louisiana	11	7	3
Maine	13	8	2
Maryland	19	10	7
Massachusetts	80	48	20
Michigan	44	30	11
Minnesota	31	25	4
Mississippi	16	7	5
Missouri	48	24	19
Montana	3	2	1
Nebraska	13	3	4
Nevada	1	1	0
New Hampshire	13	9	4
New Jersey	32	15	10
New Mexico	4	2	2
New York	142	86	30
North Carolina	41	18	16
North Dakota	3	3	0
Ohio	61	27	24
Oklahoma	14	6	5
Oregon	20	11	5
Pennsylvania	109	54	35
Rhode Island	9	7	1
South Carolina	23	15	3
South Dakota	10	6	3
Tennessee	41	22	11
Texas	49	34	9
Utah	4	2	2
Vermont	14	8	4
Virginia	30	16	9
Washington	12	8	3
West Virginia	11	6	5
Wisconsin	28	12	12
Wyoming	0	0	0

Source: HEGIS, National Center for Education Statistics, Data Systems Branch.

Exhibit A-4
States Ranked by Total Number of Students Enrolled in Independent Institutions

State	Students	State	Students
New York	397,586	Kentucky	22,312
Massachusetts	208,903	Louisiana	20,645
Pennsylvania	184,953	Oklahoma	19,758
California	171,061	Alabama	19,298
Illinois	139,554	New Hampshire	16,650
Ohio	99,693	Oregon	15,745
Texas	81,598	Nebraska	13,723
New Jersey	70,281	Colorado	13,462
Missouri	66,696	Kansas	13,593
Florida	60,480	Vermont	11,836
Michigan	59,571	West Virginia	10,844
Connecticut	56,105	Maine	10,235
Indiana	54,144	Mississippi	10,049
North Carolina	52,281	Arkansas	9,521
Tennessee	41,756	South Dakota	8,565
Minnesota	38,624	Idaho	7,711
Iowa	38,035	Arizona	4,871
Georgia	31,200	Delaware	4,758
Wisconsin	30,196	New Mexico	4,298
Virginia	30,080	Hawaii	3,581
Utah	30,073	Montana	3,055
Rhode Island	29,031	North Dakota	1,152
Maryland	28,687	Alaska	287
South Carolina	25,853	Nevada	185
Washington	22,908	Wyoming	---

Source: "Opening Fall Enrollments, Fall 1976," *The Chronicle of Higher Education*, Feb. 22, 1977.

Exhibit A-5
States (including D.C.) Ranked by Percentage of Students Enrolled in Independent Institutions

State	Percentage	State	Percentage
Washington, D.C.	83	Delaware	15
Massachusetts	57	Maryland	14
Rhode Island	48	Oklahoma	14
New Hampshire	43	Arkansas	13
New York	42	Louisiana	13
Vermont	41	Texas	13
Pennsylvania	39	Virginia	13
Connecticut	38	West Virginia	13
Utah	36	Wisconsin	13
Iowa	31	Alabama	12
Missouri	30	Michigan	12
South Dakota	28	Oregon	11
Maine	26	Kansas	11
Indiana	25	Mississippi	10
New Jersey	24	Montana	10
Tennessee	23	Washington	10
Illinois	23	California	9
Ohio	22	Colorado	9
South Carolina	21	Hawaii	8
North Carolina	21	New Mexico	8
Minnesota	21	North Dakota	4
Idaho	20	Arizona	3
Georgia	18	Alaska	2
Nebraska	18	Nevada	1
Florida	17	Wyoming	--
Kentucky	17		

Source: Based upon "Opening Fall Enrollments, 1976," *The Chronicle of Higher Education*, Feb. 22, 1977.

Exhibit A-6

Comparison of 1971 and 1975 Enrollment Status of College-Eligible Primary Family Members 18-24 and Participation Rates by Control (Public and private) and Public and Private Shares of Enrollment (Enrollment given in thousands)

	Total		Income Under $5,000		Income $5,000 – $9,999		Income $10,000 – $14,999		Income $15,000 and Over	
	1971	1975	1971	1975	1971	1975	1971	1975	1971	1975
Total college-eligible primary family members, 18-24	13,989	17,332	2,562	1,691	5,631	4,189	3,787	4,392	2,832	5,727
College enrollment	5,603	5,998	680	461	1,449	913	1,396	1,214	1,694	2,898
Total participation rate	40%	35%	27%	27%	26%	22%	37%	28%	60%	51%
Total public college enrollment	4,354	4,680	546	393	1,206	734	1,105	976	1,215	3, 1
Participation rate	31%	27%	21%	23%	21%	18%	29%	22%	43%	38%
Public share of enrollment	77%	78%	80%	85%	83%	80%	79%	80%	72%	75%
Total private enrollment	1,249	1,318	134	68	243	179	291	238	479	690
Participation rate	9%	8%	5%	4%	4%	4%	8%	5%	17%	12%
Private share of enrollment	23%	22%	20%	15%	17%	20%	21%	20%	28%	24%

Source: U.S. Bureau of the Census, *Current Population Reports* Series P-20, Nos. 241 and 303, "School Enrollment — Social and Economic Characteristics of Students, October 1971 and 1975," Washington, D.C., 1972 and 1976.

Exhibit A-7

Tuition Differentials, Public and Independent Institutions, by State, 1974-75

Universities and Highly Selective Liberal Arts Colleges	Comprehensive Institutions and Less Selective Liberal Arts Colleges
Less Than $500	
Alabama, Alaska, Arkansas, Arizona, Delaware, Hawaii, Idaho, Kansas, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, West Virginia and Wyoming	Wyoming
$500-999	
Kentucky and Oklahoma	Alabama, Arkansas, Arizona, Hawaii, Kentucky, Louisiana, Mississippi, Nevada, North Dakota, Oklahoma and Tennessee
$1,000-1,499	
Michigan and South Carolina	Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington and Wisconsin
$1,500-2,000	
Illinois, Indiana, Maryland, Minnesota, Missouri, New Jersey, Ohio, Pennsylvania, Texas and Washington	Alaska, California, Connecticut, Delaware, Idaho, Maine, Massachusetts, New Hampshire, New York, Rhode Island and West Virginia
$2,000-2,500	
California, Colorado, Connecticut, Florida, Georgia, Iowa, Louisiana, Massachusetts, New York, North Carolina, Oregon, Tennessee, Virginia and Wisconsin	No institutions fall into this category.
Greater than $2,500	
Maine, New Hampshire, Rhode Island and Vermont	No institutions fall into this category.

Source: *The States and Higher Education: A Proud Past and a Vital Future*, Supplement to a Commentary of the Carnegie Foundation for the Advancement of Teaching (Berkeley, Calif., Carnegie Council on Policy Issues in Higher Education, 1976).

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Exhibit A-8
1974-75 Current Fund Expenditures Plus Mandatory Transfers per FTE Public and Independent Institutions

State	Public	Independent
Alabama	$3298	$3579
Alaska	9256	5177
Arizona	2763	2116
Arkansas	3475	2381
California	2886	5627
Colorado	4002	4480
Connecticut	2779	6452
Delaware	3725	2426
District of Columbia	4460	6157
Florida	3235	4433
Georgia	3538	4891
Hawaii	3375	2594
Idaho	3403	1716
Illinois	3357	4853
Indiana	4201	3272
Iowa	4598	3170
Kansas	3181	3056
Kentucky	4080	3023
Louisiana	2781	4664
Maine	3375	3934
Maryland	3887	7742
Massachusetts	2388	5593
Michigan	3714	3210
Minnesota	4084	3401
Mississippi	3107	3237
Missouri	3150	5182
Montana	2907	2551
Nebraska	3732	3473
Nevada	2467	1359
New Hampshire	3266	5282
New Jersey	2984	4438
New Mexico	3203	2774
New York	3838	5793
North Carolina	3993	4658
North Dakota	3081	3390
Ohio	3180	3762
Oklahoma	2355	2581
Oregon	3013	3393
Pennsylvania	3796	4607
Rhode Island	3781	3773
South Carolina	3552	2660
South Dakota	3282	3258
Tennessee	3174	4156
Texas	2924	4047
Utah	3923	2023
Vermont	4460	3384
Virginia	3009	3511
Washington	3390	2816
West Virginia	2405	2794
Wisconsin	4059	4262
Wyoming	3882	0

Source: HEGIS, National Center for Education Statistics, Data Systems Branch.

Exhibit A-9
Statutory or Constitutional Statewide Coordinating and/or Governing Agencies and Their Responsibilities Relating to Independent Higher Education

Statewide agencies with statutory responsibility for planning/coordination for independent colleges and universities:

Alaska Commission on Postsecondary Education
Arkansas Department of Higher Education*
California Postsecondary Education Commission
Colorado Commission on Higher Education
Connecticut Commission for Higher Education
University of Hawaii, Board of Regents*
Illinois Board of Higher Education
Indiana Commission for Higher Education
Kentucky Council on Public Higher Education*
Maine Postsecondary Education Commission*
Maryland Board for Higher Education
Massachusetts Board of Higher Education
Minnesota Higher Education Coordinating Board
Missouri Coordinating Board for Higher Education
Nebraska Coordinating Commission for Postsecondary Education
New Hampshire Postsecondary Education Commission
New Jersey Board of Higher Education
New Mexico Board of Educational Finance
New York Board of Regents, University of the State of New York
North Carolina Board of Governors, University of North Carolina
Ohio Board of Regents
Oklahoma State Regents for Higher Education
Oregon Educational Coordinating Commission
Pennsylvania State Department of Education
South Carolina Commission on Higher Education
South Dakota Department of Education and Cultural Affairs*
Texas Coordinating Board, Texas College and University System
Utah State Board of Regents
Washington State Council for Postsecondary Education

Statutory or constitutional statewide agencies which conduct planning/coordination as a matter of policy for independent institutions:

Alabama Commission on Higher Education
Idaho State Board of Education
Tennessee Higher Education Commission

*As state planning (1202) commission.

Source: *State Postsecondary Education Profiles Handbook, 1977 Edition* (Denver, Colo.: Education Commission of the States, March 1977).

Exhibit A-10
State-by-State Analysis of Private Institution Participation in Statewide Planning for Higher Education

State and Agency	Mechanisms for Participation[1]	Types of Participation[2]	Data Provided State Agency							Attempt to Avoid Program Duplication	Encourage Sharing of Resources
			Current Enrollment	Projected Enrollment	Student Aid	Applications/ Admissions	Finance	New Programs	Other		
Alabama – Commission on Higher Education	B	J	x	x	x	x	x	x		no	yes
Alaska – Commission on Postsecondary Education	A	F, G, H, I, J									yes
Arizona – Commission on Postsecondary Education*	A	F, G, I, J	x					x		no	yes
Arkansas – State Department of Postsecondary Education	C	G	x		x			x		yes	yes
California – Postsecondary Education Commission	A	F, H, J	x	x	x	x	x		x	no	no
Colorado – Commission on Higher Education	E[3]	F, G, H, I, J	x	x			x		x	yes	yes
Connecticut – Commission for Higher Education	A, C, E	F, G, H, I, J, K	x	x	x		x	x	x	yes	yes
Delaware – Postsecondary Education Commission*	A	F, G, H, I, J	x	x	x	x			x	no	yes
District of Columbia – Commission on Postsecondary Education	A	K	x					x	x	no	
Florida – State Planning Council for Post-High School Education*	A	K									
Georgia – Postsecondary Education Commission*	A, C	K							x	yes	yes
Hawaii – Board of Regents, University of Hawaii	4									yes	no
Idaho – State Board of Education	E[3]	F, G, I, J	x		x					yes	yes
Illinois – Board of Higher Education	B, D, E	F, G, H, I	x		x		x			yes	yes
Indiana – Commission on Higher Education	C	J	x							yes	yes
Iowa – Higher Education Facilities Commission*	A		x	x	x					yes	yes
Kansas – Legislative Education Planning Commission*	D, E	K	x		x					yes	no
Kentucky – Council on Public Higher Education	C	F, G, H, I, J	x	x	x		x			yes	yes
Louisiana – Board of Regents	D	F, G, H, I, J	x	x			x			yes	yes
Maine – Postsecondary Education Commission	A	I	x							no	no
Maryland – State Board for Higher Education	A, E	F, G, H, I, J	x		x		x	x		yes	yes
Massachusetts – Board of Higher Education	C, E	F, G, H, I, J, K	x				x	x	x	yes	yes
Michigan – State Board of Education	B	F, G, H, I, J									yes
Minnesota – Higher Education Coordinating Board	D, E[3]	F, G, H, I	x		x		x	x	x	yes	yes
Mississippi – Postsecondary Education Planning Board*	A	K								yes	yes
Missouri – Department of Higher Education	E[3]	F, G, H, I, J, K	x				x	x	x	yes	no
Montana – Commission on Federal Higher Education Programs*	A	F, G, H, J	x	x						no	no
Nebraska – Coordinating Commission for Postsecondary Education	A	F, G, H, I, J	x							yes	no
Nevada – Higher Education Commission*	A										
New Hampshire – Postsecondary Education Commission	A	F, G, H, I, J	x				x	x		yes	yes
New Jersey – State Board of Higher Education	A, C, D	F, G, H, I, J, K	x	x	x	x	x	x	x	yes	yes
New Mexico – Board of Educational Finance	E[3]	F, G	x				x			no	no
New York – Board of Regents	D, E[3]	F, G, H, I, J, K	x	x	x	x	x	x	x	yes	yes
North Carolina – Board of Governors, University of North Carolina	E	K	x	x	x	x	x		x	yes	yes
North Dakota – Higher Education Facilities Commission*	4		x		x				x	yes	yes
Ohio – Board of Regents	B, C, D, E	G, I, K	x					x		yes	yes
Oklahoma – State Regents for Higher Education	E	F, G, I, J	x					x	x	yes	
Oregon – Educational Coordinating Commission	C, D, E	F, G, H, I, J	x	x	x		x	x		yes	yes
Pennsylvania – State Department of Education	A, E	F, G, H, I, J	x			x	x	x		yes	yes
Rhode Island – Postsecondary Education Commission*	A	F, G, H, I, J, K	x							yes	yes
South Carolina – Commission on Higher Education	A, C	F, G, I, J	x		x		x			yes	yes
South Dakota – Department of Education and Cultural Affairs Commission on Educational and Cultural Affairs Planning	A, D	F, G, I, J	x				x		x	yes	yes
Tennessee – Higher Education Commission	C, D	F, G, H, I, J	x	x	x		x			yes	yes
Texas – Coordinating Board, Texas College and University System	C, D, E	F, G, K	x		x					yes	yes
Utah – State Board of Regents	A, D, E	I, J	x	x				x	x	yes	yes
Vermont – Higher Education Planning Commission*	A	F, G, H, I, J	x	x	x			x		yes	yes
Virginia – State Council of Higher Education	B, E[3]	F, G, H, I, J	x	x	x		x			yes	yes
Washington – Council for Postsecondary Education	A, B, D	J	x	x	x			x		yes	yes
West Virginia – Board of Regents	B	F, G, H, I, J	x		x				x		no
Wisconsin – Board of Regents, University of Wisconsin	4							x		no	no
Wyoming – Higher Education Council											

*Designated 1202 commission; in Florida, Montana, Nevada, North Dakota and Rhode Island, the commission is staffed by the state coordinating or governing agency.

[1]Mechanisms:
A – voting membership on the planning agency;
B – committee of private college presidents acting in advisory role to planning agency;
C – council of independent colleges acting in advisory role to planning agency;
D – direct contact from planning agency to individual institutions;
E – other (primarily ad-hoc advisory committee memberships).

[2]Types of participation:
F – identification of immediate postsecondary needs;
G – identification of long-range needs;
H – identification of implications of changing economic conditions;
I – appraisal of plans, needs and resources of existing public and private institutions for planning purposes;
J – provision of projected enrollments and programs;
K – other.

[3]Private sector representation on a legislatively established advisory committee to the state planning agency.

[4]Private sector representation mechanism not determined at the time of this study.

Source: Jay L. Chronister, *Statewide Planning and Private Higher Education* (Denver, Colo.: Education Commission of the States, 1976).

Exhibit A-11
State Support to Independent Institutions and Their Students, 1976-77

State	Student Aid Dollars per FTE[1]	Institutional Aid Dollars per FTE (Grants and Contracts)[2]	Total Aid Dollars per FTE[3]
Alabama	4	115	119
Alaska	--	--	--
Arizona	--	--	--
Arkansas	21	--	21
California	328	--	328
Colorado	--	--	--
Connecticut	39	71	109
Delaware	56	--	56
Florida	63	--	63
Georgia	242	--	242
Hawaii	--	--	--
Idaho	11	--	11
Illinois	400	72	472
Indiana	232	--	232
Iowa	295	--	295
Kansas	292	--	292
Kentucky	106	--	106
Louisiana	4	92	96
Maine	61	--	61
Maryland	59	251	310
Massachusetts	59	2	61
Michigan	327	40	367
Minnesota	189	88	277
Mississippi	59	2	61
Missouri	62	--	62
Montana	--	--	--
Nebraska	--	--	--
Nevada	--	--	--
New Hampshire	8	--	8
New Jersey	179	115	294
New Mexico	--	--	--
New York	319	243	562
North Carolina	93	93	186
North Dakota	11	--	11
Ohio	131	15	146
Oklahoma	31	--	31
Oregon	42	163	205
Pennsylvania	273	320	593
Rhode Island	64	1	65
South Carolina	326	3	329
South Dakota	5	--	5
Tennessee	28	--	28
Texas	141	--	141
Utah	--	--	--
Vermont	100	--	100
Virginia	308	--	308
Washington	29	--	29
West Virginia	88	--	88
Wisconsin	374	--	374
Wyoming	--	--	--
50-State Average	195	86	281

[1]Need-based grant programs only. From Joseph D. Boyd, National Association of State Scholarship and Grant Programs, 8th Annual Survey, NASSGP, Deerfield, Ill., 1976. Includes state pass-through of federal SSIG funds, which constitute about 6 percent of state scholarship allocations.

[2]Excluding grants and contracts for health-related programs (typically, support for medical and dental schools. Source: Nancy Berve, "State Support of Private Higher Education," *Higher Education in the States*, Vol. 6, No. 1, 1977.

[3]FTE figures from prepublication memo, "Fall Enrollment in Higher Education," National Center for Education Statistics, Washington, D.C., 1977. FTE computed as full time plus 1/3 part-time enrollment.

Exhibit A-12
Accountability Requirements of the Independent Sector

An illustrative list of the ways in which private institutions now have to make themselves accountable:

1. Reporting requirements, such as:
   a. Higher Education General Information Survey (HEGIS) data;
   b. Other financial data and reports (balance sheets, certified audits; one state legislature proposed requiring unit cost data by degree and major);
   c. Long-range institutional plans prepared according to specified formats; progress reports on plan achievements;
   d. Enrollment statistics not covered in HEGIS – e.g., age and marital status, transfers, attrition data, number of entering freshmen graduating four years hence, etc.;
   e. Student/faculty ratios;
   f. Employment statistics – new appointments by in-state and out-of-state; terminations; full-time and part-time faculty, administrators, others; salaries and benefits; faculty distribution by rank and tenure status;
   g. Affirmative action reports – faculty, administrative staff, others; students;
   h. Student financial aid statistics – number offered aid, number receiving aid, number receiving each type of aid and amount of aid, average aid payment, income distribution of aid recipients, minority status, unfunded aid.
2. Program approval by state coordinating agency:
   a. Establishment of new programs, degrees, etc.;
   b. Review of existing programs with power to recommend or authorize termination.
3. Accreditation and accreditation review:
   a. Accreditation of the institution by the regional agency;
   b. Accreditation or credentialing of individual programs in disciplines or occupational areas.
4. Health and safety compliance.
5. Pressure upon institution to participate in projects involving interinstitutional cooperation:
   a. Attendance at state and regional meetings;
   b. Participation in project planning and actual project;
   c. Submission of reports.
6. State human relations commission intervention and control affecting directly or indirectly:
   a. Appointment, promotion, tenure;
   b. Personnel procedures and records;
   c. Reports.
7. Capital controls, when assistance is available for facilities construction.

Source: The Carnegie Foundation for the Advancement of Teaching, *The States and Higher Education: A Proud Past and a Vital Future*, Supplement (Berkeley, Calif.: Carnegie Council on Policy Issues in Higher Education, 1976), pp. 44-45.

Exhibit A-13
A Summary Comparison of Accountability Measures Required of Private Colleges and Universities

Student Support Programs (55 programs evaluated)

Accountability Measure	Percentage of times required
Certification of student enrollment	72.7
Certification of student eligibility	36.4
Requirement of periodic audit and/or maintenance of discrete funds	34.5
Requirement that any report which the administering agency deems proper, appropriate, or necessary be submitted	21.8
Report of the administrative practices and policies of the institution	7.3

Institutional Support Programs (9 programs evaluated)

Accountability Measure	Percentage of times required
Certification of student enrollment	100
Requirement of periodic audit and/or maintenance of discrete funds	77.8
Requirement that any report which the administering agency deems proper, appropriate, or necessary be submitted	66.7
Certification of student eligibility	44.5
Report of the administrative practices and policies of the institution	22.2

Source: Evertt D. Martin Jr., "An Analysis of Accountability Measures Which Follow State Financial Assistance to the Private Sector of Higher Education in the United States," (Unpublished dissertation, Charlottesville, Va., 1976) p. 111. (With permission.)

Appendix B
Detailed Summary of Programs of State Support to Independent Institutions and Their Students

Category of Support	Subcategory	States Employing this Subcategory	General Purposes of Subcategory	Possible Limitations/ Qualifications	Implications	Remarks
AID TO STUDENTS	Need-based grants, General	All but the following: Alaska, Arizona, Colorado, Hawaii, Mississippi, Montana, Nevada, Nebraska, New Mexico, Utah, Wyoming (no independent institutions)	To broaden post-secondary choice available to students from lower- and middle-income families, in order to reduce the limits placed on choice by ability to pay.	Public and independent institutions Independent institutions in-state only Independent institutions in- or out-of-state Ability and need	Reduces barriers to access based upon ability to pay and thus broadens choice beyond low cost institutions. Combined with federal programs can be very effective at low family income levels; less so for middle income students unless maximum award levels approximate highest tuition at independent institutions and family contribution schedules are flexible enough.	Some states prohibit use at "sectarian" institutions. States are reluctant to allow portability of grants (seven states now have). Suggests a federal role in providing inducements for freer student movement across state boundaries.
	Need-based grants – Categorical	California, Connecticut, Delaware, Florida, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New York, Rhode Island, Virginia, Wisconsin	To stimulate college attendance among disadvantaged students. To encourage enrollment in specific areas (manpower development). To encourage enrollment in specific institutions. To offer rewards for public service. To encourage enrollment of specific categories of students.		Targets students for whom attendance barriers have usually been more than financial. Enrollment of disadvantaged students appears to have retention advantages at independent institutions, but may involve cost of education "premiums" for institution.	
	Need-based grants – Categorical: Health related	Delaware, Maryland, Minnesota, Mississippi, New Jersey, New York, North Carolina, South Carolina, Rhode Island, Virginia	To facilitate and encourage enrollment in specified areas of medicine and other health related fields.			
	Non-need based grants – General	Virginia, Georgia, North Carolina	To equalize tuition between public and independent institutions.	Students attending independent institutions	Small award levels may be effective inducements for students from higher income families to attend independent institutions. Advantage-savings to state if state costs are lower than costs per student in alternative public institutions.	Tuition equalization or tuition offset grants are increasingly popular. Provide assistance to some middle class families to whom student aid would be otherwise unavailable.

						Disadvantage-loss to state if subsidies do not affect student choice of independent institutions.	
	Loans – General	Alaska Connecticut Florida Kentucky Louisiana Massachusetts Minnesota New Mexico Other states have guaranteed student loan agencies which may assist independent college students.	New York North Carolina Ohio Oklahoma South Carolina Tennessee Texas Vermont	To increase a student's capacity for self-help and increase the efficiency and equity of federal programs.	Specified programs or institutions Graduate students		
	Loans – Categorical	Arkansas Minnesota Mississippi North Carolina	North Dakota South Dakota Tennessee	To increase enrollment in specific programs. To meet specialized manpower needs			
	Work/study jobs	Connecticut Kentucky Minnesota	North Carolina Washington	To increase student's capacity for self-help.			
DIRECT SUPPORT TO INSTITUTIONS	General purpose grants	Alabama Iowa Louisiana	Maryland Michigan New York	Institutional support; maintenance of enrollment.	In some states grants based upon additional state residents enrolled.	Allows states to stimulate maximum utilization of independent institution facilities and maintain quality through augmentation of income. Where dollars are earmarked for student aid, reduces institution's reliance on current fund sources for financial aid. Evidence is that general purpose grants have contributed to stability of vulnerable independent institutions.	Direct institutional grants recognize that however effective student aid programs may be, they affect only an institution's tuition income and thus provide few institutional benefits, especially in the case of unusually high cost programs (e.g., engineering) or for qualitative enrichment (since tuition costs are still largely controlled by market competition with public and other independent institutions).
				Block Grants to Institutions for general purposes.	Designated institutions	Permits maximum institutional flexibility in use of dollars. Means that institutions, not states, determine purpose.	
	Categorical grants	Alabama Iowa Louisiana Florida Illinois Michigan Minnesota	New York New Jersey Ohio Pennsylvania Rhode Island Wisconsin	To maintain special programs or functions (e.g., programs in critical manpower needs – health) or critical functions (e.g., disadvantaged).		Insures efficient use of independent institutional resources and facilities in important critical fields; allows state to insure the continuation of specific instructional, research or	

Category of Support	Subcategory	States Employing this Subcategory		General Purposes of Subcategory	Possible Limitations/ Qualifications	Implications	Remarks
	Categorical grants (cont.)					public service programs, probably at lower cost than if state-operated. Insures clear and specific accountability.	
				To increase enrollment in special programs or categories of students.	Designated categories of students (e.g., disadvantaged)	Facilitates state determined increases in enrollment for certain categories of students or program objectives.	
				To compensate institution for cost-of-education and recognize add-on costs of enrollment of students with need for unusual support service.	Cost of education grants usually based on number of scholarship holders.		
	Contracts – General purpose	Connecticut Minnesota New Jersey	Oregon Virginia	Institutional support and maintenance of institutional viability. Maintenance of enrollment levels		Purposes are similar to general purpose or enrollment increase grant. Contract mechanism specifies accountability, may avoid negative constitutional implications.	
	Contracts – Categorical*	California Georgia Iowa Kansas North Carolina	Ohio Tennessee Texas Wisconsin	Enrollment and student aid Maintenance of specific programs Facilitation of enrollment by in-state students especially certain categories (low income) or special programs (health-related). Enrollment increases in specific programs Facilitation of purchase of specific services by state or public institutions		Permits state utilization of independent institutional facilities for specific program unavailable in state or local area, probably at lower unit cost. If conducted in independent institutions, uses its resources efficiently, but may create impossible tension between its own students and those on contract program. Allows high degree of specificity of state objectives and precise criteria by which their accomplishments will be measured.	More attention should be paid to contractual utilization of independent institutions in public institutions facilities. Contracts are especially worthy of consideration where program need can be accommodated by expanding existing independent institutions rather than development in public institutions.
	Facilities grants	Alabama	Maryland				
	Construction loans	New York					Although new construction has slowed, states should consider the usefulness of loans for renovation.

INDIRECT INSTITUTIONAL SUPPORT	Facilities authorities	Most states have provision for property tax exemption and 18 states have various other forms of indirect institutional support.	Low cost (to state) form of assistance. *May* encourage overbuilding on part of some institutions.
	Tax-exempt bonding power		
	Eminent domain		
	Property tax exemption		Most common form of assistance
	Tax exemptions for charitable contributions		Little used; presents great opportunities for cost saving to independent institutions at small state expense.
	Centralized purchasing (including insurance)		
	Management assistance		Few states employ; may be extremely helpful in the next decade to institutions most affected by demographic changes.
	Tax rebates		
	Support services (computers, interlibrary arrangements, etc.)		Provides real support at fairly low marginal costs (where system in operation is extended to independent institution).
	Support of interinstitutional cooperation		

*In addition, numerous states have developed reciprocity arrangements with private institutions through the three regional compacts for higher education.

Source: Nancy M. Berve, "State Support of Private Higher Education," *Higher Education in the States*, Vol. 6, No. 1, 1977.

APPENDIX C

THE LEGAL STATUS OF STATE AID TO INDEPENDENT COLLEGES AND STUDENTS ATTENDING THEM

by James Olliver, Director of Research
North Carolina Association of Independent Colleges and Universities

The First Amendment

Recent Decisions and the Three-Part Test

As author I. F. Stone cleverly phrased it, reading Supreme Court decisions is a good deal like reading tea leaves. You can always find what you are looking for.[1] The principles of law surrounding aid to nonpublic colleges and universities have been evolving since the Dartmouth case, and while they remain ambiguous, the eight decisions rendered by the court since 1970 provide the best framework within which to identify the trends and parameters.

Initially, it should be mentioned that support for nonpublic, nonsectarian education appears to pose no problem for the federal government or the states, assuming a public purpose is being served[2] and no other constitutional proscriptions are being breached.[3]

The problem becomes one of supporting church-related colleges and universities without violating the First Amendment. Since close to half of all independent colleges in the United States declare themselves to be church-related, with others having formalistic church ties while claiming to be independent, states contemplating the funding of nonpublic education must be cognizant of church-state issues or risk eliminating a substantial number, if not all, of the seemingly eligible institutions.

In 1972, '73, '74 and '76, the U.S. Supreme Court distinguished between higher education and K-12 in a series of decisions. Each program of aid was put to the three-part test which evolved from earlier cases decided on the establishment clause issue that asked: "Does the statute: 1) reflect a secular legislative purpose; 2) have the primary effect of advancing or inhibiting religion; 3) in its administration, foster an excessive entanglement with religion?"

Exhibit C-1 (exhibits may be found at the end of this appendix) lists the cases and citations, the issues raised, and the opinion of the justices voting in each case. The permissibility or impermissibility of aid in these cases revolved around three concepts: 1) the nature of the institution(s) benefited, 2) the form of the aid provided and 3) the church-state entanglement resulting from the administration of the aid program.

The Supreme Court distinguished in 1971 between the salary supplements and purchasing of services in the parochial schools and the grants for construction at colleges because of 1) the "generally significant differences" between the religious aspects of church-related colleges and parochial elementary and secondary schools, and 2) the "nonideological character" of the aid. Due to the elaborate safeguards necessary to insure that aid to parochial schools was not furthering their religious mission, the Court foresaw an impermissible entanglement and did not find it necessary to speak to the primary effect test. In *Tilton*, the college case, however, the justices approved the facilities grants under the banner of "secular, neutral, or nonideological services, facilities or materials that are supplied to all students regardless of the affiliation of the schools they attend."[4]

The perceived differences between the mission of a church-related college and a parochial school were illustrated in the Court's rejection of the plaintiff's characterization of a typical church-related college:

> We are told that such a "composite" institution imposes restrictions on admissions, requires attendance at religious activities, compels obedience to the doctrines and dogmas of the faith, requires instruction in theology and doctrine, and does everything it can to propagate a particular religion.[5]

The justices rejected the composite by saying:

> Perhaps some church-related schools fit the pattern that appellants describe. Indeed, some colleges have been declared ineligible for aid by the authorities that administer the Act. . . . Individual projects can be properly evaluated if and when challenges arise with respect to particular recipients and some evidence is then presented to show that the institution does in fact possess these characteristics. We cannot, however, strike down an Act of Congress on the basis of a hypothetical profile.[6]

While the Supreme Court did *not* delineate which or how many of the appellants' criteria would be necessary to find a college unconstitutionally sectarian, it did describe the characteristics of the four colleges for which aid was approved:

> All four schools are governed by Catholic religious organizations, and the faculties and student bodies at each are predominantly Catholic. Nevertheless, the evidence shows that non-Catholics were admitted as students and given faculty appointments. Not one of these four institutions requires students to attend religious services. Although all four schools require their students to take theology courses, the parties stipulated that these courses are taught according to the academic requirements of the subject matter and the teacher's concept of professional standards. The parties also stipulated that the courses covered a range of human religious experiences and are not limited to courses about the Roman Catholic religion. The schools introduced evidence that they made no attempt to indoctrinate students or to proselytize. Indeed, some of the required theology courses taught at Albertus Magnus and Sacred Heart are taught by rabbis. Finally, . . . these four schools subscribe to a well-established set of principles of academic freedom. . . . In short, the evidence shows institutions with admittedly religious functions but whose predominant higher education mission is to provide their students with a secular education.[7]

Since indoctrination was not viewed as a substantial purpose of these institutions the Court found the risk of entanglement was lessened. The danger of entanglement was nonetheless real as witnessed by the Court's action in excising a provision in the statute which would have allowed the recipient institutions to use the buildings for religious purposes after a period of twenty years. Central to the plurality's judgment in *Tilton* was the thesis that at the college level secular functions could be separated from sectarian functions in such a way as to allow governmental assistance to the secular functions without entangling the state in the institutions' religious affairs.

Indeed the court in *Hunt* went on to clarify the definition of the "primary effect" test as follows:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.[8]

The decisions in the three K-12 cases decided with *Hunt* were resolved on the basis of this test. The court in each instance found the religious K-12 institutions to be "pervasively sectarian," citing characteristics similar to the plaintiff's composite profile in *Tilton*. In *Hunt*, however, defendant Baptist College at Charleston was likened to the approved "*Tilton*-colleges." While the institution was governed and controlled by the South Carolina Baptist Convention, the lack of religious qualifications for faculty membership or student admission were cited with favor by the justices. Similarly, the finding that "only 60 percent" of the student body was Baptist — roughly the same percentage found in the region — was noted in the decision. The Supreme Court concluded that Baptist College was no more an instrument of religious indoctrination than were the *Tilton* institutions.

The majority also commented that the aid provided, the creation of an instrumentality through which the educational institutions could borrow funds at more favorable interest rates than would otherwise be available, was not "financial assistance, directly or indirectly." As in *Tilton*, the nature of the institution aided, and the character of the aid mitigated the danger of entanglement. The minority strenuously opposed this reasoning, claiming the "continuing relationship or dependency" created by the program and the potential of the state actually administering the facilities breached the entanglement test.

The 1971 and 1973 decisions of the Supreme Court, plus the defeat in *Meek* in 1974, left parochial K-12 in an "insoluble paradox" with respect to governmental assistance. If the aid was clearly delineated to support only the secular functions of the schools, excessive entanglement would result from the attempts to guarantee a separation from sectarian activities. If the aid was not clearly delineated the primary effect test was breached. The first test, i.e., whether a statute fulfills a secular legislative purpose, has not been violated in any of the cases described.

Against the background of these decisions the Supreme Court heard the challenge to Maryland's program of direct noncategorical grants to nonpublic, including church-related, colleges and universities. The plaintiffs argued that the institutions in Maryland were pervasively sectarian and that the form of the aid was such that the entanglement test was breached as a result of the excessive contacts necessary to monitor the program.

A 5-4 majority of the justices disagreed in

upholding the statute. Justices Blackmun, Burger and Powell agreed that the program passed all three phases of the three-part test. Justices White and Rehnquist felt this test was too stringent, and while voting with the plurality, opined that passing the first two tests was sufficient to uphold the First Amendment. Entanglement, they argued, was a redundant measure.

The key issue resolved in *Roemer* was the admission by the court that "(while) the form-of-aid distinctions in *Tilton* are . . . of questionable importance, the character-of-institution distinctions of *Lemon I* are most impressive."[9] Direct noncategorical grants, in other words, would be as "nonideological" as facilities grants if used by "*Tilton*-colleges" for secular purposes. The court agreed that direct aid to the church-related colleges in Maryland did pass the constitutional tests because the institutions did substantially mirror those approved for facilities assistance in *Tilton*, and because procedures were established to see that secular functions of the institutions were supported.

Current First Amendment Tests

The three-part test has now evolved to include an examination of the nature of the recipient institution(s), the *use* of the funds, and the resulting entanglement. One initial caveat: These criteria have applied to the programs of assistance for and to church-related institutions themselves. The Supreme Court has yet to rule on the thesis that aid provided directly to a student attending college obviates the need to conduct an investigation into the sectarian/secular nature of the institution he plans to attend.

With this caveat in mind, recall the characteristics of the *Tilton*-college: academic freedom practiced, no indoctrination or proselytizing, courses taught according to academic requirements of subject matter. Beyond these characteristics the court has not delineated when an institution becomes "pervasively sectarian." Does, for example, exhibiting a certain number of activities outlined in the plaintiff's "composite profile" eliminate an institution from eligibility? The Court in *Tilton* left this possibility open when it concluded:

> Individual projects can be properly evaluated if and when challenges arise with respect to particular recipients and some evidence is then presented to show that the institution does in fact possess these characteristics.[10]

The states of Illinois and New York have established criteria which must be met in order for a college or university to qualify for direct institutional aid.[11] Institutions ineligible to participate in the direct aid programs have been allowed to participate in student aid programs in the sense that students eligible for state scholarships are able to use them at these schools.

Regarding the use of the funds, the second part "primary effect" test defined in *Hunt* requires that funds be used for secular purposes only. The regulations in *Roemer*, cited favorably by the court, provide illustrations of legitimate secular avenues for the funds. Assuming an institution can show itself to be sufficiently secular for the sectarian aspects to be separated from secular activities, the *Roemer* decision indicates that a broad spectrum of possible ends for governmental assistance exists. While the court did not approve (or disapprove) any specific activities which could or could not be funded, it will not take much imagination for policy makers to determine secular activities of church-related colleges worthy of state support. The suggestion by plaintiffs in previous cases that funding secular activities frees up dollars an institution can then use to support its religious functions has been repeatedly rejected:

> . . . the Court has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends.[12]

The entanglement test was particularly crucial to the plaintiff's argument in the *Roemer* case. Administering a program of noncategorical grants would require significantly greater interaction between the colleges and the governmental agencies. The fact that these grants were recurring and that continual requests for increases could be forecast also differed from the "one-time, single purpose" facilities grants in *Tilton*. The plurality in the *Roemer* case applied the test and concluded that entanglement varies in large measure with the extent that religion permeates the institution(s). Since the Maryland institutions were found to be "*Tilton*-colleges," and the regulations promulgated allowed for a "quick and non-judgmental" review to insure that only secular purposes were supported, the statute passed the third test. In addition to administrative entanglement the Court has raised the specter of political entanglement, i.e., an impermissible "potential for divisive religious fragmentation in the political arena."[13] Beginning in *Tilton* and sustained in *Hunt* and

Roemer however, the Court has indicated that the danger of political entanglement is substantially lessened by the character and diversity of collegiate institutions and their broadened constituency beyond the local level.

Constitutional Parameters and Their Implications for Policy Makers

What do these decisions mean for public policy makers? Initially, the Court can be said to have clearly approved aid to certain types of private church-related colleges in a number of forms, including noncategorical grants.

Exhibit C-2 delineates the higher education cases decided by federal and state courts during this decade by type of aid provided. An understanding of the current status of constitutional parameters is best discussed within this framework.

Direct Noncategorical Aid. "*Tilton*-colleges" are eligible to receive direct aid provided they spend it only for secular purposes. Restrictive language must be included in the statute either allowing expenditures only for secular purposes or excluding them from sectarian purposes. Administrative regulations must be promulgated to insure compliance with the statutory restrictions and pre- and post-expenditure affidavits verifying the uses of the funds should be included. Still unanswered is the question, "When does a college cross over the line to be 'pervasively sectarian'?" In *Nyquist*, the Court struck down various assistance programs to parochial elementary and secondary schools, stating that they conformed to a "profile" of a sectarian school, ones that:

> (a) impose religious restrictions upon admissions,
> (b) require attendance of pupils at religious activities,
> (c) require obedience by students to the doctrines and dogmas of a particular faith,
> (d) require pupils to attend instruction in theology of doctrine of a particular faith,
> (e) are an integral part of the religious mission of the church sponsoring it,
> (f) have as a substantial purpose the inculcation of religious values,
> (g) impose restrictions on faculty appointments and
> (h) impose religious restrictions on what or how the faculty may teach.[14]

Clearly certain religious characteristics, functions, and denominational ties are allowed and colleges may have the "encouragement of spiritual development" as "one secondary objective." Policy makers would be advised to exclude clearly sectarian institutions from participating in direct aid programs. The criteria for inclusion or exclusion may well lie somewhere between the "profile" and the "*Tilton*-college."

Direct categorical aid. Programs of facilities grants would fall within this category. Again the courts should have no difficulty sustaining such programs assuming the institution is not pervasively sectarian, the grant is for a distinctly secular purpose, and the administrative regulations provide for quick and nonjudgmental auditing procedures.

Student aid. The issue recently litigated in several states concerns this form of aid. Since the Supreme Court has not spoken specifically on this type of assistance the views of both proponents and opponents must be examined. Three student aid cases, in North Carolina,[15] Tennessee[16] and Arkansas,[17] have been upheld by federal district courts and two are being appealed to the U.S. Supreme Court.

Tennessee provides the best example of the "pure" student aid program where the aid available goes directly to students, who may then choose a public or private (church-related or nonchurch-related) college. Under this scheme, proponents claim, any analysis of institutional characteristics is out of place. As under the G.I. Bill, students receive the checks which they may use for educational purposes where they have enrolled. The opponents argue that students are just conduits for assisting institutions with tuition funds and, accordingly, institutional eligibility criteria should be applied to insure that pervasively sectarian institutions do not receive funds under the programs.

Proponents of the "pure" student aid (no institutional eligibility) theory point to the historical evolution of student aid,[18] the fact that federal student aid programs have liberal eligibility standards, and a footnote by Justice Powell in a case where tuition grants to parents of parochial elementary and secondary schools were struck down:

> Because of the manner in which we have resolved the tuition grant issue, we need not decide whether the significantly religious character of the statute's beneficiaries might differentiate the present case from a case involving some form of public assistance (e.g., scholarships) made available generally without regard to the sectarian-nonsectarian,

> or public-nonpublic nature of the institution benefited. . . . Thus, our decision today does not compel, as appellees have contended, the conclusion that the educational assistance provisions of the "G.I. Bill" . . . impermissibly advance religion in violation of the Establishment Clause.[19]

Opponents argue that previous tuition grant decisions invalidating K-12 programs are appropriate in two ways: 1) the institutions are the ultimate beneficiaries and therefore should be analyzed and 2) student aid per se is not sufficiently restricted to insure that the funds are not used for sectarian purposes. If the Supreme Court agrees with the Tennessee federal district court that the "pure" student aid theory is legitimate, the constitutional issue is moot.

The court has already dismissed for want of a substantial federal question the South Carolina program which provided loan funds to students attending public and private colleges, including theological seminaries.[20] Similarly, the challenge to loan programs in North Carolina was dismissed from the litigation there due to the South Carolina precedent. It would appear that the constitutional validity of loan programs is now clear under the First Amendment.

If the theory is sustained, student grant aid will be categorized like loan assistance — available for students to use at the college of their choice without restriction. When the grant assistance is available only for students attending independent colleges, the question becomes even more confused and the argument for "pure" student aid loses much of its power.

It would appear logical that *if* institutional eligibility criteria are applied, student aid would fall within the category of direct categorical aid. Indeed, student aid, with certain reservations, is a legitimate avenue for institutional expenditure in the Maryland regulations cited extensively by the court in *Roemer*. Opponents argue that student aid is not, in itself, a legitimate secular objective, and that without further restructions it violates the proscription that aid be used for secular purposes only. Recall that institutional aid programs must have statutory restrictions against sectarian use. Programs involving student aid in Missouri and Kansas have been approved by the courts. In Kansas the federal district court itself defined *Tilton*-like criteria colleges were to meet in order to qualify, and in Missouri the governing board has developed institutional criteria since the state supreme court upheld the face validity of the program. Neither of these cases tested the "pure" student aid defense.

Since student aid is by far the most common form of governmental assistance affecting church-related colleges, any restrictions placed on these programs become particularly crucial, especially if institutional eligibility criteria are found to apply. States operating direct aid programs currently exclude some sectarian institutions from participating, while students attending the same colleges are able to use state grants to cover tuition costs. Some states have excluded majors in divinity, theology or other religious-vocation curricula from scholarship assistance. The federal student aid programs have no such restrictions on institutions or student programs. Current cases ultimately should determine whether or not these exclusions are necessary in student aid programs and when.

Facilities assistance. As the review of facilities assistance cases in Exhibit C-2 indicates, courts have had little difficulty sustaining programs of this type. Like student loan programs, the aid is "of a very special sort" in that no expenditure of public funds is actually made, and the credit of the state is generally not pledged. It may be significant that even with this form of aid the characteristics of defendant Baptist College of Charleston were reviewed by the Court.

Several additional questions remain. Perhaps the most serious is the eligibility of students majoring in religion to receive governmental grants. The Maryland statute under challenge in *Roemer* eliminated majors in theology and divinity from participating in the program. The district court, citing the composition of the departments of religion in the defendant schools (most if not all of the members were clerics in the affiliated church), could not determine with certainty that religious proselytizing was not occurring, and therefore eliminated religion majors also. Despite an *amicus* brief filed by several education associations denouncing this particular finding, the Supreme Court, on appeal, did not rule on the issue.

In the recent decision by the federal district court in North Carolina, the justices cited favorably the regulations whereby students majoring in church-vocation curricula have been excluded from participation in the grant programs, but religion majors are eligible to participate. Religion taught as an academic discipline, within the professional standards of the discipline, has been viewed as the rule in the church-related colleges as much as in the public

universities. The North Carolina court concluded: "The courses in religion . . . are taught according to the academic requirements intrinsic to the subject matter. There is no evidence of attempts to propagate articles of Christian faith in those academic courses."[21]

Another question has been raised by Justice Stevens in his *Roemer* dissent, i.e., does this carrot of governmental financing in effect lead to a "disestablishment" of religion as colleges shed their sectarian attributes to become eligible for support? Stevens' remarks indicate the extent to which the Court is concerned with policy questions, for the issue raised is a policy issue and not a constitutional one.

To avoid more costly litigation in the *Roemer* case, defendant Western Maryland College entered into an agreement with the plaintiffs whereby the college would disavow its religious affiliation and activities in return for dismissal from the case. Included in this agreement was a promise to remove virtually all religious symbols from the buildings and grounds and to remain strictly neutral in terms of students' spiritual involvement. The pact was viewed as a model by the plaintiffs, but as evidenced by the favorable decision in *Roemer*, Western Maryland did not have to go to such extremes to be eligible for assistance.

Still, the question of how decisions upholding governmental aid may weaken the churches' ties is likely to be raised in the courts, and will surely be raised on the college campuses, as litigation proceeds.

State Constitutions

Constitutional Provisions

A lengthy review of First Amendment questions is a necessary prelude to a discussion of state constitutional questions for two major reasons: 1) the church-state challenges filed to date in state courts have also claimed a breach of the First Amendment, and 2) state courts are likely to examine programs through the prism of the three-part test evolved by the Supreme Court. Still, state constitutions do pose an additional barrier beyond the First Amendment and should be carefully monitored by policy makers seeking to design programs in the individual states.

The extent to which states do assist their own independent church-related colleges, and the students attending them, reflects the reality that, as on the federal level, the "wall of separation" between church and state rarely exists. Instead, interpretive problems surround a "blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship."[22]

Exhibit C-3 places the constitutional provisions in the fifty states relevant to state support for independent colleges and universities into nine categories. Generally the provisions to the left of "Appropriations to Sec. Ed. from Certain Funds Prohib." may be viewed *on their face* as more severe than the First Amendment. Using this criterion every state except North Carolina has provisions at least as severe as the First Amendment.

This categorization, however, can be extremely deceiving, and points to the importance of examining judicial interpretation. The state supreme court in Vermont, for example, has opined that the United States Constitution is more restrictive than the Vermont Constitution with regard to assistance to sectarian education.[23] Both Maine and Maryland with provisions similar to the First Amendment has equated their constitutional proscriptions with those of the United States Constitution. Illinois, with a much more severe provision on its face, has similarly equated its provisions with federal decisions.[24]

In Missouri the state supreme court recently upheld 4-3 the state's student aid program despite the following seemingly prohibitive restriction in the state constitution:

> Article IX, Sec. 8 – Neither the general assembly, nor any county, city, town township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever, nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

The program was sustained because, among other reasons: 1) the funds were granted to students, not institutions; 2) the differences between collegiate and elementary and secondary education were felt to be significant and 3) the statutory restriction was included allowing grants to be used only at "approved private institutions" which among other criteria had to be under the control of an independent board.

This latter restriction was sufficient for the court to determine that the "control" language in the constitutional proscription had been met. Clearly, an examination of the language of statutory provisions alone is insufficient to determine the constitutional parameters of the issue.

It is possible, however, tempered by the interpretations of the provisions by the justices in the state courts to differentiate among the constitutions. Some bar aid to private as well as church-related colleges. Some only proscribe assistance *to* church-related colleges while others forbid the state from any appropriations *to* or *in aid of* a church-related college. There is no clear distinction on the meaning of these two phrases as they relate to particular forms of aid. A number of states bar aid only to sectarian institutions, a proscription which may or may not include a specific church-related college.

The majority of the state constitutions contain provisions only slightly stronger and just as ambiguous as the First Amendment. Aid to private colleges in these states, at least in some forms, has been and should continue to be viewed favorably as the courts find the colleges to be primarily purveyors of secular services. Nonetheless, the imprecise meaning of most of the provisions as well as the individualized manner in which state courts have evolved an interpretation of the relevant provisions mandates a state-by-state appraisal of specific provisions.

This is not to say that in many states strong constitutional proscriptions would not bar most, if not all forms of state assistance. The language in those provisions in the first three columns of Exhibit C-3 is more often than not clear and unambiguous in forbidding state aid. The most severe provisions are found in those western states with few private colleges and no aid programs beyond contracts for student spaces.

Six states (Georgia, Louisiana, Massachusetts, Nebraska, South Carolina and Virginia) have amended their constitutions to allow various forms of aid to church-related colleges and their students. Washington, after suffering a series of setbacks in student aid litigation is currently revising its constitution. For many states a constitutional amendment may be the only way to overcome severe constitutional provisions restricting aid to private colleges and their students. For most states, a favorable interpretation by the courts in light of "contemporary standards" could equate relevant state provisions with those of the United States Constitution.

The Pattern of Litigation

An analysis of the case law and opinions of the attorney generals[25] on and tangential to, the issue of state support for private schools can be divided into three major epochs. Prior to the 20th century the distinction drawn by the courts divided aid to public as opposed to private corporations or individuals. Due in part to the Dartmouth College decision by the Supreme Court and in part to attempts by private corporations, notably railroads, for state support, the charter of the institution became a key factor. State aid to private schools was struck down because of the private character of the schools rather than their religious character. Scholarship aid to *private* individuals at a state university campus was barred based on similar thinking. Many early cases also were concerned with the place of religion, notably the Bible, in the public schools. More often than not, despite strict constitutional provisions, the practice of Bible-reading was upheld, ostensibly on the thesis that religion in the schools was allowable. It was the advancement of a particular sect that was forbidden.

The first half of the 20th century was characterized by a shift from a rigid separation of public and private to division between the secular and the sectarian. Aid to private corporations or private individuals was viewed favorably as long as a public purpose was being accomplished. A primary example of this approach occurred in Louisiana[26] where the state court upheld the loaning of textbooks to nonpublic school students on the theory that education was a public purpose and that the child was beneficiary of the loan program. The institution was at best assisted only incidentally. State courts during this period viewed appropriations to sectarian activities as inappropriate, while being generally supportive of nonsectarian religious activities and exercises.

Beginning with the *Everson* bus transportation case, and over the past two and a half decades, the Supreme Court has taken the leadership in defining the relationship of government and religious activities and institutions. The court has gone beyond what most consider the original definition and meaning of the First Amendment and steered a path of government neutrality toward religion rather than support for religion when it is "nondenominational." Interestingly, Illinois and New York, with constitutional provisions more severe than the First Amendment, upheld programs of released-

time[27] and nondenominational prayer[28] before they were struck down by the Supreme Court. In Michigan, which has a religious freedom clause similar to the First Amendment, the state supreme court upheld the purchase of secular educational services before the court struck down a similar program.[29]

Exhibit C-4 illustrates the pattern of state court decisions. Apparent at first glance is the fact that aid to private colleges and their students has not been litigated extensively. Some of the cases cited in the "aid to church-related colleges and universities" section were decided in the last century and are of doubtful significance as precedent today. Perhaps the most heavily litigated program tangential to the issue of aiding private colleges is transportation of nonpublic school students. It is evident from reading the language in these cases that the Supreme Court's earlier "child benefit" distinction whereby the child benefits directly while the institution is only remotely assisted, breaks down in the light of particular state constitutional provisions. The court in 1947 approved the New Jersey transportation statute in *Everson* because the student was the primary beneficiary with the institution relieved of no obligations. In those states barring similar transportation statutes on the basis of state constitutional provisions, the direct-indirect line is blurred and the sectarian nature of the schools indirectly benefited becomes paramount. Whether indirect aid in the form of scholarships to students at independent, church-related colleges would suffer the same fate under certain state constitutions may rest in large measure with state court appraisals of the character individual institutions. It is much more likely, in other words, that institutional eligibility criteria will be applied to any form of aid granted in those states with the strictest constitutional proscriptions.

Exhibit C-4 shows that the courts in some states (e.g., Illinois, Maryland and New York) have consistently ruled to uphold programs of aid and support for religious or church-related exercises, programs or institutions, as long as clearly sectarian interests were not being directly advanced. The decisions of other state courts (e.g., South Dakota and Washington) reveal a posture of strict church-state separation. Significantly, the decisions are not necessarily correlated with the severity of constitutional provisions, indicating that the predispositions of the justices may be equally as important as the language in the provisions in ascertaining constitutional parameters. The great majority of the states have either too few cases to establish a pattern, or show, like the Supreme Court, a mixed response to the issues presented depending on the nature of the programs litigated.

The overall picture, therefore, remains cloudy; no discernible pattern in the states can be enunciated. Within the language of individual constitutional provisions state courts will shape the parameters for each state. Given the division between K-12 and higher education enunciated by the Supreme Court, and the ambiguity of decisions, state courts will sail their own course between the Scylla and Charybdis of establishment and free exercise of religion.

Tests and Parameters Beyond the First Amendment

The inevitable result of the thrust for state support for independent colleges, the majority of which are at least nominally affiliated with a church, is a widening of the arena of conflict. Defeated in the legislatures, opponents of aid to private colleges and universities will increasingly turn to the courts for a remedy.

The debate in the state courts, while mindful of the parameters set by the Supreme Court, will center around at least six additional foci: 1) the distinction between direct and indirect aid, 2) the distinction between higher education and K-12, 3) application of contemporary standards, 4) the definition of "sectarian," 5) the question of standing and 6) the question of potentiality.

Distinctions between direct and indirect aid have not been established by the Supreme Court though its decisions have tended to cause many to conclude that criteria applied to the latter will be less strict than those applied in instances of direct support. The language in the state constitutions often makes this distinction a crucial one. The words "directly or indirectly" are found in the proscriptions of some states; others contain language forbidding aid "to or in aid of." The South Carolina and Nebraska constitutions were amended to remove the "or in aid of" clause on the premise that student aid programs were not "to" the institutions and therefore would be sustained with the clause removed. The primary question of this parameter, of course, hinges on what becomes direct aid as opposed to indirect aid. State courts have come to no consensus on this issue if bus transportation of parochial school students can be viewed as analagous. Transportation programs in Alaska[30] and Delaware,[31] for instance, were viewed by the court as directly benefiting the

institutions in violation of the constitutions. Student tuition was similarly viewed as the "life blood" of the institutions and held student aid to be proscribed by the Virginia Constitution.[32] Many states, in short, will be forced by the language of their constitutions to examine the direct-indirect parameter in more detail than the Supreme Court has done in examining various forms of aid.

The distinction between higher education and the primary and secondary schools is another key parameter within which state courts will decide on aid-to-private-colleges challenges. The decisions by the Supreme Court in *Tilton, Hunt* and *Roemer* clearly separate the colleges from nonpublic K-12. Four justices in both *Tilton* and *Roemer* failed to fully accept that distinction, however, and state courts are not bound to accept the majority view as they deliberate under more severe constitutional restrictions. While this distinction has been made in most states where litigation has occurred concerning aid to private colleges or their students, decisions barring aid to students in church-related colleges in Alabama,[33] Nebraska[34] and Washington[35] failed to appreciate the differences. Should state courts fail to differentiate between the higher and lower educational institutions, programs of aid are likely to be barred given the fairly clear understanding that aid to nonpublic (parochial) K-12, will, beyond bus transportation and textbooks, breach the First Amendment. It will be incumbent upon defendant colleges and state agencies to marshall testimony explaining, and indeed proving, the generally significant differences that do exist. Careful reading of those cases where the significance of the distinction was not recognized by the courts indicates that the judges were woefully ignorant of the educational program and organization which characterizes the church-related college campuses of the 1970s.

Application of "contemporary standards" is one way state courts have used to explain shifts in interpretation of constitutional provisions, at times overruling judicial precedent when a program may seem at odds with the actual language of the provisions. In Arizona the state supreme court upheld grants to a series of agencies and church groups for emergency relief despite strong constitutional provisions. The provisions, it stated, were to be "enforced in the context of the contemporary fabric of our society and in light of its needs."[36] Similar thinking in Illinois and New York was responsible for overturning negative decisions on aiding a religious orphan asylum[37] and providing textbooks for parochial school students at state expense.[38] Given the rulings by the Supreme Court in support of aid to church-related colleges and the evolving secular function these institutions perform, state courts may depart from previous patterns or interpretations and rule in favor of aiding nonpublic, church-related colleges. Precedent for this approach exists in upholding the funding of private institutions for public purposes, when the fact of their "privateness" may have precluded support of the same institutions one hundred years ago.

The definition of what constitutes a "sectarian" institution is the fourth parameter facing state courts. To answer this question is to answer the Supreme Court test concerning the nature of the institution(s) to be aided. The first recent attempt to delineate "degrees of religiosity" was accomplished in Maryland.[39] The Supreme Court in *Tilton* did not clarify what activities would need to be present (or absent) to warrant a suspension of state assistance, though the set of criteria was less rigid than *Horace Mann. Hunt* and *Roemer* simply concluded that the institutions in question were like the colleges in *Tilton* without further definition, though Baptist College in Charleston did appear to have a closer relationship to the denomination in terms of governance. It is not clear how state courts, especially those hearing challenges under constitutional provisions barring aid to any "sectarian institution," will go about defining that entity. The state supreme court in Washington, in striking down that state's tuition grant program for private college students simply noted that all the institutions "were founded upon and continue to be dedicated to some elements of sectarian purpose and influence."[40] In Kansas the federal district court set forth eight criteria under which colleges were to be examined. While the tuition grant program was upheld, five of the seventeen eligible institutions were ruled to be ineligible for activities encompassed in only one of the eight criteria. The important point is that state courts remain relatively free to view given aid programs through the prism of their own artificially constructed criteria for determining a college's "sectarianism." Reviewing the decisions of the state courts regarding the controversy over whether or not the Bible was a sectarian book reveals the gamut of interpretation that may be expected.

The question of taxpayer standing is one that has not been researched in conjunction with this

paper. In *Flast v. Cohen* a taxpayer was granted standing to challenge the constitutionality of federal appropriations even though his interest might be considered "comparatively minute and indeterminable."[41] By comparison, the right of a taxpayer to raise a challenge to state appropriations is a matter determined by the case law in the individual states. In Kansas the tuition grant program was upheld by the federal district court after plaintiffs had sought without success to have the case heard in state courts. Given the more severe provisions against aid to private or church-related colleges found in a number of constitutions, the question of standing to sue under these provisions might become a crucial one.

The question of potentiality, the final parameter to be discussed, is a state of mind rather than a point to be documented or proven. The Supreme Court justices appear to have assumed that the potential always exists for religious indoctrination and sectarian teaching in nonpublic primary and secondary schools. Programs designed to funnel state money into the secular aspects of these schools could not be upheld because the potential for misuse (and therefore the need for constant surveillance) was too great. In supporting church-related colleges, at least in the forms tested to date, the potential for advancing religion has not been viewed as constitutionally significant. On the contrary, college education has been characterized by its academic freedom in the classroom and the ability to separate secular functions from the sectarian activities advancing the former while remaining neutral with regard to the latter. It remains to be seen if the state courts will make similar assumptions with regard to state aid for church-related colleges. Predispositions and knowledge of the different nature of college and K-12 educational methodologies and goals on the part of individual justices bear on the final outcome of the deliberations.

The Supreme Court decisions to date have encouraged private college officials. Failure to secure aid in particular states as often as not relates to legislative and political difficulties. The Court has begun to define the permissible "degree of religiosity" which institutions must have to receive governmental funds and the forms that aid may take. By comparison with the Supreme Court's three-part test, no trends are evident from the analysis of the state court decisions beyond the obvious observation that funding of sectarian activity will not be allowed. Indeed the three-part test is likely to be the first analysis done by the state courts. Since several student aid cases have recently been decided in federal district court it is likely that the Supreme Court will have enunciated further guidelines on this form of aid prior to additional state interpretations in the area. Should the Court conclude that student aid is equivalent to direct institutional aid, an unlikely proposition, the "direct-indirect," and "support to or in aid of" clauses in the state constitutions would loom as an even more proscriptive barrier. General principles differentiating higher education from K-12 will guide the states in defining their own constitutions, but the sharper focus of the provisions in the states will require more precise definitions within the parameters noted.

Implications for Policy Makers

While the constitutional parameters surrounding state support for church-related colleges and universities and students attending them are still evolving, policy makers at the state level are able to draw upon available guidelines, directions and suggestions. Any state with a severe constitutional proscription against aiding church-related colleges would do well to research the question of taxpayer standing. Having a state aid program challenged only on First Amendment grounds at the federal district court level, because the state court will not hear a litigant's petition, is clearly beneficial. There is one less barrier to cross — and in many states it is the more difficult barrier.

Drafting constitutional statutes and regulations. Assuming a careful study of the constitutional restrictions (both state and federal) has been made, the fashioning of appropriately restrictive statutes and nonentangling regulations is of crucial importance if face constitutionality is to be sustained.

As indicated earlier, the court has not determined the restrictions (if any) that are to be placed on student aid programs, although courts in Kansas, Missouri and Nebraska have implied that for certain forms of student aid certain restrictions are applicable. (See citations in Exhibit C-2). It is clear that statutes authorizing direct aid programs must have a clause limiting funding to secular (nonreligious) purposes. Additionally, it would be wise to include a standard severability clause in the event that the court finds one or more institutions or facets of the program to be in violation of the constitution.

The newly organized National Association of

Independent Colleges and Universities (NAICU) is committed to providing assistance to states designing programs and facing constitutional challenges, especially as those challenges relate broadly to aid for independent institutions. NAICU has established an *ad hoc* committee composed of experts in the field which will serve as an information bank and communications link.

Preparing for and engaging in litigation. The decisions rendered by the Supreme Court provide a base for designing and defending certain programs of support to certain church-related institutions for certain functions. Potential court challenges may be eliminated if the aid contemplated mirrors in all respects programs already sustained by the court. The student loan program in North Carolina, for example, was sufficiently similar to the program in South Carolina (dismissed for want of a substantial federal question by the Court) that it was removed from the suit by the federal district court.

It is incumbent upon the plaintiffs to prove that a given statute either is unconstitutional on its face, or as it is applied to certain church-related institutions. Again given the caveat of student aid, the question of face constitutionality should pose little problem if the guidelines laid down in earlier decisions are followed scrupulously. In fact, it is not clear that challenges in federal court will stand if only the *application* of a statute is in question. The matter then becomes an administrative rather than a constitutional one.

Facing the task of proving improper application of a statute may be less difficult for a plaintiff given: 1) the clouded view of what constitutes an ineligible "pervasively sectarian" institution (or however else a state constitution is phrased) and 2) the tendency of the colleges themselves to overstate their religious nature in college publications and addresses. As a result a plaintiff may well be able to paint a distorted portrait of any given college based on catalog rhetoric but having little basis in actual practice. This places the college in the unenviable position of explaining the difference between its theological language and educational program.

Those responsible for state aid programs might anticipate this problem by eliminating Bible schools and colleges which offer solely theological degrees and by alerting officials of the liberal arts colleges to the danger of including ambiguous, superfluous and oftentimes inaccurate statements of college activities and goals in catalogs, handbooks or even speeches. The institutions should be made aware of the importance of stressing their primary *educational* purposes, the academic freedom provided their faculty, and policies of nondiscrimination in hiring, admissions and financial aid. All unnecessary or overzealous references to religious requirements, preferences or restrictions should be removed.

Constitutional revision. Despite the successes church-related college programs have had before the Supreme Court, some states may well need to revise their constitutions prior to initiating legislation. This route has been taken in a number of states, as already noted, and in most cases the change followed litigation which confirmed unconstitutionality under the previous code. A state can either attempt to eliminate obstructive language, as in South Carolina where a proscription against "direct and indirect aid" was modified to eliminate the word "indirect," thereby opening the way for student aid funding. Or the state can insert enabling language, as in Georgia, where tuition grants were specifically authorized by including: "Not withstanding any other provision of this Constitution the General Assembly may by law provide for grants of state, county or municipal funds to citizens of the state for educational purposes, in discharge of all obligations of the state to provide adequate education for its citizens."[42]

Constitutional revision, however, has been difficult and may become even more so. Parochial referenda over the past decade have proven to be unsuccessful in 10 of 11 attempts. Any revision which would appear to open the way for aid to religious elementary and secondary schools would be extremely difficult to sustain. Even attempts to secure assistance for private college students by express language will meet with stiff resistance from taxpayers, given the current state of the economy. Such a referendum was defeated in Nebraska last fall. Given budgetary constraints some officials from the public sector of higher education can be expected to oppose constitutional modification. Educators from state colleges and universities are involved in the current litigation in Louisiana and Tennessee, and participated in the *Roemer* suit. Still, constitutional revision is an appropriate avenue as a precursor to state support for church-related colleges and may be the only avenue if the "pure student aid" argument fails. Beyond careful drafting of the provision or

change, however, a carefully orchestrated effort will be necessary to insure that the modification is both understood and broadly supported.

Footnotes

[1] I. F. Stone, "A Flexible Record," *New York Times* July 27, 1973.

[2] See Cochran v. Louisiana, 281 U.S. 370 (1930), and Everson v. Board of Education, 330 U.S. I (1947).

[3] Norwood v. Harrison, 413 U.S. 540 (1973), where aid to private schools discriminating on racial grounds was struck down.

[4] Tilton v. Richardson, 403 U.S. 672, 687 (1971).

[5] *Ibid.* at 681.

[6] *Ibid.*

[7] *Ibid.* at 685-686.

[8] Hunt v. McNair, 413 U.S. 734, 742 (1973).

[9] Roemer v. Board of Public Works, 44 L.W. 4939, 4948 (1976).

[10] Tilton at 682.

[11] For New York see memorandum from James E. Allen Jr., commissioner of education, to chief executive officers of institutions of higher education, "Constitutional Eligibility of Certain Non-Public Institutions of Higher Education for State Aid Pursuant to Ch. 677 of the Laws of 1968," Aug. 12, 1968. See also State Education Department, "State Aid to Non-Public Colleges," Section 6401 of the Education Law, Rules of the Board of Regents, Regulations of the Commissioner of Education, June 1973. For Illinois see Board of Higher Education, State of Illinois, "Financial Assistance Act for Nonpublic Institutions of Higher Learning," (undated), revised Oct. 1, 1974.

[12] Hunt at 743.

[13] Tilton at 688.

[14] Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 767-768 (1973).

[15] Smith, et al. v. Board of Governors of the University of North Carolina, et al., United States District Court for the Western District of North Carolina, Charlotte Division, No. C-C-76-131 (1977).

[16] Americans United for Separation of Church and State, et al. v. Blanton, et al., United States District Court for the Middle District of Tennessee, Nashville Division, No. 76-227-NA-CV (1977).

[17] Lendall v. Cook, United States District Court for the Eastern District of Arkansas, Western Division, No. LR-75-C-287 (1977).

[18] As early as 1961 the Secretary of HEW in responding to a legislative request differentiated between higher education and K-12 and between institutional aid and student aid. The latter, he reasoned, would face less constitutional difficulty because the student would be exercising free choice without governmental compulsion on institutional preference. See "Memorandum on the Impact of the First Amendment to the Constitution Upon Federal Aid to Education" reprinted in *50 Georgetown L.J. 349* (1961).

[19] Nyquist at 782-783, n. 38.

[20] Durham v. McLeod, 192 S.E. 2d 202 (1972), appeal dismissed, 413 U.S. 902 (1973).

[21] Smith at 12.

[22] Lemon v. Kurtzman, 403 U.S. 602-614 (1971).

[23] Vermont Educational Buildings Financing Agency v. Mann, 247 A.2d 68 (1968).

[24] Board of Education v. Bakalis, 299 N.E. 2d 737 (1973).

[25] In some states an opinion by the attorney general, absent a judicial decision on point, has the force of law, at least for state agencies. In other states the opinion is valued solely as persuasive documentation.

[26] Borden v. Louisiana State Board of Education, 123 So. 655 (1929).

[27] People *ex rel.* McCollum v. Board of Education, 71 N.E. 2d 161 (1947).

[28] Engle v. Vitale, 191 N.Y.S. 2d 453 (1959).

[29] *In re* Legislature's Request for an Opinion of the Constitutionality of Chapter 2 of Amendatory Act No. 100 of the Public Acts of 1970, 780 N.W. 2d 265 (1970).

[30] Matthews v. Quinton, 362 P.2d 932 (1961).

[31] Opinion of the Justices, 216 A.2d 663 (1966).

[32] Almond v. Day, 89 S.E. 2d 851 (1955).

[33] Opinion of the Justices, 280 So.2d 547 (1973).

[34] State *ex rel.* Rogers v. Swanson, General No. 39032, Supreme Court of Nebraska (1974).

[35] Weiss v. O'Brien, 509 P.2d 973 (1973).

[36] Community Council v. Jordan, 432 P.2d 460 (1967).

[37] Dunn v. Chicago Industrial School for Girls, 117 N.E. 735 (1917).

[38] Board of Education of Central School District No. 1 v. Allen, 228 N.E. 2d 791 (1967), affd. 392 U.S. 236 (1968).

[39] Horace Mann v. Board of Public Works, 220 A.2d 51, appeal dismissed and cert. denied 385 U.S. 97 (1966).

[40] Americans United for Separation of Church and State, et al. v. Bubb, et al., 379 F. Supp. 872 (1974).

[41] Flast v. Cohen, 392 U.S. 83 (1968).

[42] Article VIII, Sec. XIII, Par. 1, *Constitution of Georgia.*

Exhibit C-1
Opinions by the Justices of the U.S. Supreme Court in the "Establishment Clause" Cases Decided Since 1970

	1971		1973				1974	1976
	Lemon I[1]	Tilton[2]	Levitt[3]	Nyquist[4]	Lemon II[5]	Hunt[6]	Meek[7]	Roemer[8]
White	+	+	+	+	+	+	+	+
Burger	–	+	–	+	+	+	+	+
Blackmun	–	+	–	–	–	+	–	+
Stewart	–	+	–	–	–	+	–	–
Harlan	–	+	na	na	na	na	na	na
Douglas	–	–	–	–	–	–	–	na
Marshall	–	–	–	–	–	–	–	–
Brennan	–	–	–	–	–	–	–	–
Black	–	–	na	na	na	na	na	na
Powell	na	na	–	–	–	+	–	+
Renquist	na	na	–	+	+	+	+	+
Stevens	na	na	na	na	na	na	na	–

+ = A vote to uphold the statute.
– = A vote to strike down the statute.
na = Not applicable. This individual did not participate in the decision.

[1] Lemon v. Kurtzman, 403 U.S. 602 (1971). The court in *Lemon I* struck down a Rhode Island statute authorizing salary supplements for nonpublic school teachers and a Pennsylvania statute authorizing the state to purchase secular educational services from nonpublic schools. The program was held to entangle religion and the state in violation of the third test.

[2] Tilton v. Richardson, 403 U.S. 672 (1971). The court in *Tilton* approved the use of federal funds under the Higher Education Act of 1963 for the construction of academic facilities on four church-related campuses in Connecticut.

[3] Levitt v. Committee for Public Education and Religious Liberty, 413 U.S. 472 (1973). The court in *Levitt* struck down a New York program reimbursing nonpublic schools for testing and record-keeping. The program was found to violate the primary effect test.

[4] Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973). The court in *Nyquist* struck down tuition reimbursement or tax credits for parents of children attending nonpublic school in New York by the 6-3 vote shown. A third program challenged in *Nyquist*, grants to the nonpublic schools for maintenance and repair, was decided by the same 8-1 vote as in *Levitt*. The primary effect test was violated under each of the three programs.

[5] Sloan v. Lemon, 413 U.S. 825 (1973). The court in *Lemon II* struck down a Pennsylvania statute providing for reimbursement of a share of tuition paid parents who sent their children to nonpublic schools. The primary effect test was violated by the statute.

[6] Hunt v. McNair, 413 U.S. 734 (1973). The court in *Hunt* upheld a South Carolina statute authorizing the issuance of state revenue bonds for facilities construction at colleges and universities, including those controlled by religious sects.

[7] Meek v. Pittinger, 421 U.S. 349 (1974). The court in *Meek* invalidated provisions of two Pennsylvania acts authorizing "auxiliary services" (counseling, testing, speech and hearing therapy, etc.) and the direct loan of instructional materials and equipment. The latter failed the primary effect test; the former, the entanglement test. The court upheld a portion of the act which authorized the lending of textbooks free of charge to both public and nonpublic school pupils.

[8] Roemer v. Board of Public Works, 44 LW 4939 (1976). The court in *Roemer* upheld a Maryland statute authorizing annual noncategorical grants to private, including church-related colleges.

Exhibit C-2
Federal and State Court Decisions
Public Funds for Church-Related Colleges or Students Attending Them, 1970-77

Case	State	Court of Record	Decision Rendered: State Constitution	Decision Rendered: Federal Constitution
Federal Types of Aid Programs				
Facilities Grants				
Tilton v. Richardson[1]		U.S. Supreme		Upheld
State Types of Aid Programs				
Direct Noncategorical Aid				
Roemer v. Board of Public Works[2]	Maryland	U.S. Supreme		Upheld
Iona College v. Nyquist[3]	New York	State Supreme	Struck down	Struck down
Canisius College v. Nyquist[4]	New York	State Supreme	Upheld	Upheld
College of New Rochelle v. Nyquist[5]	New York	State Supreme	Upheld	Upheld
State *ex rel.* Warren v. Nusbaum[6]	Wisconsin	State Supreme	Struck down	Struck down
Citizens for the Advancement of Public Education v. Board of Regents[7]	Louisiana	Federal District	Pending	
Tuition Grants (Private college students only)				
Smith v. Board of Governors[8]	North Carolina	Federal District		Upheld
Americans United v. Bubb[9]	Kansas	Federal District		Upheld
State *ex rel.* Rogers v. Swanson[10]	Nebraska	State Supreme	Struck down	Struck down
Americans United v. Pryor[11]	Kentucky	Circuit Court		Upheld
Opinion of the Justices[12]	Alabama	State Supreme	Struck down	Struck down
Hartness v. Patterson[13]	South Carolina	State Supreme	Struck down	

[1] 403 U.S. 672 (1971).

[2] 44 L.W. 4939 (1976).

[3] 316 N.Y.S. 2d 139 (1970). Inasmuch as Iona College was found to be a sectarian institution, the court concluded it would be ineligible to receive funds under the State or Federal Constitution. Canisius College and the College of New Rochelle (see next two footnotes) were found to be less than pervasively sectarian in the New York court's liberal interpretation of that state's constitution.

[4] 320 N.Y.S. 2d 652 (1971).

[5] 326 N.Y.S. 2d 765 (1971).

[6] 198 N.W. 2d 650 (1972). An arrangement whereby state funds for a dental school at Marquette University flowed directly to Marquette, without adequate restrictions to insure that funds would be used only for the secular purposes of the dental school, was found to violate the constitution. The court indicated, however, that a statute could constitutionally be drawn to sufficiently segregate the funds without dissolving the dental school as a part of the university. See *State ex rel. Warren v. Reuter*, 170 N.W. 2d 790 (1969).

[7] Action has been filed in Louisiana against that state's program of institutional aid. No secular use clause was contained in the statute and the defendants are attempting to remedy the defects in the statute at this time.

[8] U.S.D.C., Western District of N.C., Charlotte Division, No. C-C-76-131 (1977). Three student aid programs were challenged in the *Smith* case: two tuition grant programs available to private college students only — one need-based, the other an offset grant to every student — and one public-private need-based scholarship program matching the federal SSIG funds. The state's loan program had been upheld earlier by the district court for want of a substantial federal question. (See footnote 20).

[9] 379 F. Supp. 872 (1974).

[10] 219 N.W. 2d 726 (1974). Failure to restrict the funds to "secular subjects" was a principal defect in the statute.

[11] Franklin Circuit Court Civil Action No. 84114, March, 1974.

[12] 280 So. 2d 547 (1973). The program was found to fail the entanglement test.

[13] 179 S.E. 2d 907 (1971). The program was found to violate the state constitutional proscription disallowing aid "indirectly" to church-related colleges.

Tuition Grants (Public and private college students)				
Americans United v. Blanton[14]	Tennessee	Federal District		Upheld
Smith v. Board of Governors[15]	North Carolina	Federal District		Upheld
Americans United v. Rogers[16]	Missouri	State Supreme	Upheld	Upheld
Lendall v. Cook[17]	Arkansas	Federal District		Upheld
Weiss v. Bruno[18]	Washington	State Supreme	Struck down	
Loans (Public and private college students)				
Smith v. Board of Governors[19]	North Carolina	Federal District		Upheld
Durham v. McLeod[20]	South Carolina	State Supreme	Upheld	Upheld
Washington State Higher Education Assistance Authority v. Graham[21]	Washington	State Supreme	Struck down	
Miller v. Ayres[22]	Virginia	State Supreme	Struck down	Upheld
Miller v. Ayres[23]	Virginia	State Supreme	Upheld	Upheld
State Education Assistance Authority v. Bank of Statesville[24]	North Carolina	State Supreme	Upheld	
Educational Facilities Authorities				
Hunt v. McNair[25]	South Carolina	U.S. Supreme		Upheld
Minnesota Higher Education Facilities Authority v. Hawk[26]	Minnesota	State Supreme	Upheld	Upheld
California Educational Facilities Authority v. Priest[27]	California	State Supreme	Upheld	Upheld
Clayton v. Kervick[28]	New Jersey	State Supreme	Upheld	Upheld
Nohrr v. Brevard County Educational Facilities Authority[29]	Florida	State Supreme	Upheld	Upheld

[14] U.S.D.C., Middle District of Tenn., Nashville Division, No. 76-227-NA-CV (1977). The program failed due to the lack of a "secular purposes only" restriction. The case was appealed to the U.S. Supreme Court but remanded following statutory changes. A revised challenge is purportedly in the works. See 384 F. Supp. 714 (1974).

[15] U.S.D.C., N.C., No. C-C-76-131 (1977).

[16] State Supreme Court No. 59410, 26 July 1976.

[17] U.S. District Court, Eastern District, Arkansas, No. LR-75-C-287 (1977).

[18] 509 P. 2d 973 (1973). The strict constitution of the state was violated.

[19] Federal District Court, No. C-C-76-131, June 16, 1976.

[20] 192 S.E. 2d 202 (1973). Appeal dismissed by the Supreme Court for want of a substantial question, 413 U.S. 902 (1973).

[21] 529 P. 22 1051 (1974). The strict constitution of the state was violated.

[22] 191 S.E. 2d 261 (1972). The Virginia Constitution prior to 1974 prohibited grants to students but allowed loans. Under the first court test the "loans" repayable in academic work were found to be grants in violation of the state constitution.

[23] 198 S.E. 2d 634 (1973). A refashioned loan program with repayments to be made in dollars or service to the state was held to be constitutional.

[24] 276 N.C. 576 (1970). The case was decided on the "public purpose" nature of the appropriation. Church-state issues were not raised.

[25] 413 U.S. 734 (1973).

[26] 232 N.W. 2d 106 (1975).

[27] 526 P. 2d 513 (1974).

[28] 267 A. 2d 503 (1970), 285 A. 2d II (1971). Remanded in light of the 1970 decisions of the U.S. Supreme Court, the New Jersey court sustained its earlier ruling in favor of the statute.

[29] 247 So. 2d 304 (1971).

Exhibit C-3
State Constitutional Provisions [1]

	All appropriations to or in aid of[2] private or sectarian higher education prohibited	All appropriations to or in aid of[2] sectarian higher education prohibited	All appropriations to sectarian higher education prohibited	All appropriations to educational institutions controlled by a sect prohibited	Appropriations to sectarian education from certain funds prohibited	General Religious Freedom Clause: No support, establishment	General Religious Freedom Clause: Free exercise guaranteed	Aid to private corporations prohibited	Loaning state credit prohibited	Miscellaneous provisions
Alabama					x	x		x		x
Alaska			x			x	x			x
Arizona	x				x	x		x		
Arkansas					x	x				x
California			x[6]	x			x	x	x	
Colorado	x	x				x	x	x	x	x[3]
Connecticut					x	x	x			x
Delaware		x				x	x		x	x
Florida					x	x[4]			x	
Georgia						x[4]			x	x[3]
Hawaii	x					x	x			x
Idaho		x				x	x		x	
Illinois				x		x	x			x
Indiana						x	x		x	
Iowa						x	x		x	x
Kansas					x	x	x			
Kentucky		x				x	x		x	x
Louisiana						x	x			x
Maine						x				x
Maryland					x	x			x	x
Massachusetts						x	x	x		x[3]
Michigan						x			x	x
Minnesota				x[5]		x			x	
Mississippi			x			x		x	x	x
Missouri				x		x[4]	x	x		x[3]
Montana	x			x[6]		x	x	x		
Nebraska			x[7]			x	x		x	
Nevada						x[4]				x
New Hampshire				x		x				x
New Jersey					x	x		x	x	x
New Mexico	x					x	x	x	x	
New York		x					x	x		x
North Carolina							x	x		x
North Dakota	x				x				x	
Ohio					x	x	x		x	x[3]
Oklahoma					x	x[4]			x	x
Oregon						x			x	x[3]
Pennsylvania			x		x	x	x		x	x
Rhode Island					x	x				x
South Carolina				x[6]		x	x		x	
South Dakota		x				x[4]	x			x
Tennessee						x	x		x	
Texas					x	x[4]	x	x	x	x[3]
Utah				x[6]		x[4]			x	
Vermont						x	x			x
Virginia			x	x[6]		x	x			x[3]
Washington		x		x		x[4]			x	
West Virginia						x	x		x	
Wisconsin						x	x		x	
Wyoming	x			x		x[4]			x	

Footnotes next page.

[1]Any individual state constitutional provision may contain a clause or clauses which are difficult to place exactly in one category (or categories). The serious reader is urged to consult the exact language of each provision. See Legislative Drafting Research Fund of Columbia University, *Constitutions of the United States: National and State* (Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1969, 1974).

[2]The identification "to or in aid of" signifies a possible juridical distinction between aid directly to institutions and aid indirectly to institutions through, for example, student aid. Indeed, some constitutions use the terminology "directly or indirectly," and the two phrases are used interchangeably here.

[3]Indicates a provision authorizing a particular program of aid for private colleges or students attending these colleges which would circumvent another more restrictive provision.

[4]This prohibition is stronger than most, prohibiting support in aid of any sectarian institution or purpose.

[5]Rather than control per se, the provision prohibits support for schools where "distinctive doctrines" are "promulgated or taught."

[6]Appropriations to any college controlled *in whole or in part* by any denomination prohibited.

[7]Appropriations to any educational institution not exclusively owned or controlled by the state prohibited.

Exhibit C-4
State Court Decisions[1]

	Aid to Church Related Colleges				Aid to Parochial K-12					Religion in Public Schools					
	Direct Aid		Indirect Aid		Direct Aid		Indirect Aid					Released Time			
Supreme Court	Grants	Facilities	Student Aid	Facilities/ Loan Author.	Facilities or Maintenance	Purchase of Services or Grants	Student Aid Tax Credits	Textbooks	Bus Transportation	Renting Facilities	Bible Reading or Prayer	In Public Schools	In Private Schools	Aid to Private Sectarian Inst., e.g. Hospitals	Aid to Private Institution or Individual, e.g., Museum, Veterans
		+		+	—	—	—	+	+		—	—	+	+	+
Alabama			—												
Alaska	— 2								—					+	+
Arizona										+					
Arkansas										+	—				
California			+	+					+				+	—	+
Colorado			+2								+			—	+
Connecticut									+3	+					+
Delaware									—						
Florida				+						+	+4			+	
Georgia											+			— +5	+
Hawaii	— 2								—						
Idaho									—						
Illinois				+			—		+	+	+— 6	+	+	+	+
Indiana									+2		+			+2	
Iowa			— 2		—				— 7	+	+				
Kansas	—				—						+				
Kentucky		— 8	+						+	+	+			+	+
Louisiana						—		+			—				—
Maine						—			+3		+				
Maryland	+	+— 9		+					+		+			+	+
Massachusetts			— 2	+		—					+				+
Michigan						+		—	+	+	+		+		—
Minnesota				+		— 2			+		+				+
Mississippi	— 10						+							+	+
Missouri			+			—		—	—						+
Montana						—									+—
Nebraska			—			—		—			—			—	
Nevada						—						— 2		— +2	
New Hampshire				+		—	—	+						+	+
New Jersey				+					+		+				+
New Mexico									—	—+	—				
New York	—+11							—+	—+	+	+		+		+
North Carolina				+											+—
North Dakota										— +					
Ohio					+				+		+	—		+	+
Oklahoma									—					— +	+
Oregon	+2,12		+2				— 2	—				—		+2	
Pennsylvania									+					— +	
Rhode Island								+							
South Carolina			—	+	+									—	
South Dakota	—						—	—	— 2		—				
Tennessee										+	+			+	+
Texas			+2				— 2		— 2		+			+	
Utah															+
Vermont				+		—									
Virginia			—				—						+		+
Washington			—	—					—		—		—		+
West Virginia			+13						+						—
Wisconsin	+—		+			—			—	+	—		+	+	— +
Wyoming															

Footnotes next page.

+ = Statute upheld
− = Statute struck down

[1]It is crucial to keep in mind that these decisions relate to specific programs and statutes. A review of individual cases is necessary to determine which issues and principles the courts resolved.

[2]Opinion by the state's attorney general.

[3]The actual statute in question was found to be unconstitutional only in that certain proscribed funds were used. The state, using other funds, could provide bus transportation to parochial school students in the view of the court.

[4]Bible reading was upheld in one case while distribution of the Gideon Bible was struck down in another.

[5]Aid to the Salvation Army prohibited. Aid to a sectarian hospital sustained.

[6]Expelling a college student for failing to attend nonsectarian religious exercises upheld. Bible reading in the public schools struck down.

[7]Two opinions were rendered, with only one decided on grounds of separation of church and state. (Students in nonpublic schools were transported across school district lines.)

[8]Disbursement from certain funds prohibited.

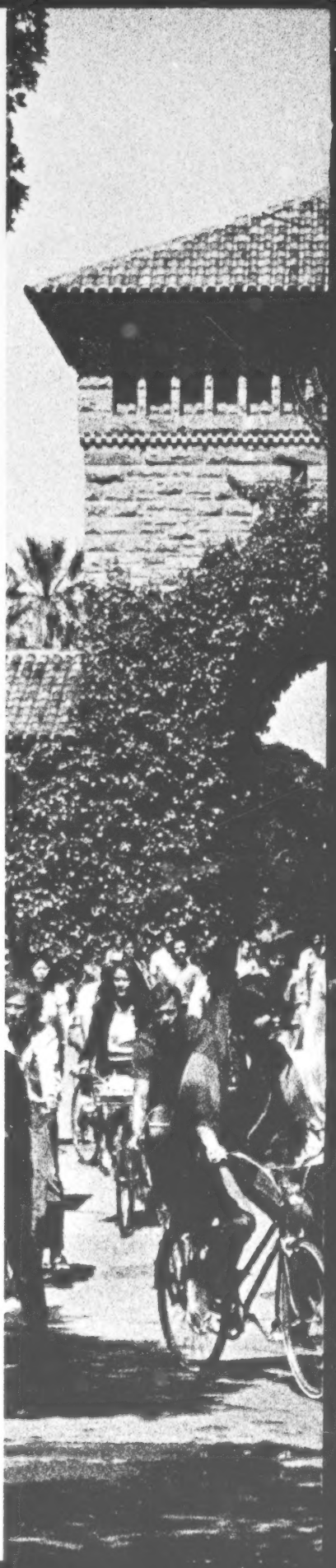
[9]Three of the four colleges receiving the facilities grants were found to be sectarian institutions ineligible under the First Amendment to receive state funds.

[10]This 1879 case restricted school fund monies from being appropriated to Lea Female College. Students in the school were as young as age eight. Given the distinctively different nature of private colleges today it would be spurious to emphasize the case as a precedent.

[11]The New York courts have liberally interpreted the constitution to allow some nominally church-related colleges to receive aid. Pervasively sectarian colleges and universities are, however, ineligible for assistance.

[12]The attorney general in this opinion determined that contracts with private colleges to educate students would not be constitutionally proscribed. Colleges with secular and sectarian functions which were inseparable, however, would not be allowed to participate.

[13]Program cited favorably in dictum.



Education Commission of the States

The Education Commission of the States is a nonprofit organization formed by interstate compact in 1966. Forty-six states, Puerto Rico and the Virgin Islands are now members. Its goal is to further a working relationship among governors, state legislators and educators for the improvement of education. This report is an outcome of one of many commission undertakings at all levels of education. The commission offices are located at 300 Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80295.

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